

# HOUSING RECEIVERSHIP: SELF-HELP NEIGHBORHOOD REVITALIZATION

DAVID LISTOKIN\*  
LIZABETH ALLEWELT\*\*  
JAMES J. NEMETH\*\*

## TABLE OF CONTENTS

I.	INTRODUCTION .....	73
II.	THE ADVANTAGES OF HOUSING RECEIVERSHIP AS A STRATEGY FOR RESPONDING TO PROBLEM PROPERTIES .	73
A.	<i>Housing Code Enforcement</i> .....	73
B.	<i>Property Tax Foreclosure as a Strategy for Respond- ing to Problem Properties</i> .....	75
	1. Foreclosure is Not Always Applicable .....	77
	2. Foreclosure is a Passive Strategy.....	77
	3. Foreclosure is a Time-Consuming Method .....	78
	4. Large-Scale Foreclosure Can Impose Significant Management Operating Demands.....	78
C.	<i>Local Resident and Neighborhood Group Response to Problem Properties</i> .....	79

\* Research Professor at the Rutgers University Center for Urban Policy Research.

\*\* Research Associates at the Rutgers University Center for Urban Policy Research.

This Article is based on a larger study commissioned by the Union-Miles Development Corporation, which is a non-profit community-based development corporation located in Cleveland, Ohio. The Cleveland Foundation and the Local Initiatives Support Corporation (LISC) provided funding for the study. The larger study will be published, with LISC assistance, by the Rutgers University Center for Urban Policy Research in 1985.

D.	<i>Strategies for Dealing with Problem Properties: Summary</i> .....	80
E.	<i>Housing Receivership as a Strategy for Dealing with Problem Properties</i> .....	81
1.	Property Control .....	82
2.	Expeditious Control .....	82
3.	Selective Control .....	83
4.	Local Resident and Neighborhood Input.....	83
III.	HOUSING RECEIVERSHIP: THE LEGAL FRAMEWORK— NATIONAL STATUTORY SURVEY AND CASE ANALYSIS...	84
A.	<i>National Statutory Survey</i> .....	84
1.	Receivership Statutes .....	85
2.	Applicable Circumstances .....	88
3.	Receivership Triggering .....	90
4.	Receivership Agent .....	92
5.	Nature of the Receivership Process .....	93
6.	Receivership Notification .....	94
7.	Receiver's Duties and Powers.....	95
8.	Receivership Financing .....	97
9.	Receiver Compensation and Discharge.....	99
B.	<i>Case Analysis: Detailed Review</i> .....	100
IV.	PROPOSED RECEIVERSHIP STATUTE AND ADMINISTRATIVE RECOMMENDATIONS .....	105
A.	<i>Proposed Receivership Statute</i> .....	105
B.	<i>Proposed Receivership Statute: Comments</i> .....	108
1.	Applicable Circumstances .....	108
2.	Receivership Triggering .....	108
3.	Receivership Agent .....	109
4.	Nature of the Receivership Process .....	109
5.	Receivership Notification .....	110
6.	Receiver's Duties and Powers.....	110
7.	Receivership Financing .....	111
8.	Receivership Compensation and Discharge .....	111
C.	<i>Administrative Considerations</i> .....	111
1.	Targeting of Receivership .....	112
a.	<i>Neighborhood</i> .....	112
b.	<i>Property and Other Factors</i> .....	114
2.	Program Packaging .....	115
3.	Multigroup Participation.....	116
V.	CONCLUSION .....	116
APPENDIX	Housing Receivership: National Statutory Frame- work—Detailed Analysis.....	117

## I. INTRODUCTION

This Article examines the present application and potential of housing receivership. Receivership is a mechanism whereby a receiver—either public or private—is appointed as a responsible caretaker of deteriorated properties. The Article is divided into three sections. The first considers state and local governments' traditional responses to the problem of neglected urban buildings, the drawbacks of these techniques, and the advantages of remediation offered by housing receivership. A review of receivership's legal framework follows, including a review of both state-enabling legislation and court decisions. The Article concludes with a model state-of-the-art receivership statute.

## II. THE ADVANTAGES OF HOUSING RECEIVERSHIP AS A STRATEGY FOR RESPONDING TO PROBLEM PROPERTIES

### A. *Housing Code Enforcement*

Problem urban properties in the United States—poorly maintained structures that ultimately may be abandoned—are a long-standing dilemma dating from the slums of the nineteenth century.<sup>1</sup> These conditions led to the nation's first response to problem buildings: the enactment of housing codes. A housing code is an application of the state's police power, enacted by a local ordinance or state statute, setting the minimum standards for safety, health, and welfare of the occupants of housing.<sup>2</sup> As previously stated, the first housing codes in the United States date from the mid- to late-nineteenth century. It was not until the mid-twentieth century, however, that housing codes became commonplace.<sup>3</sup>

How effectively have housing codes achieved their objective of forcing building maintenance? The track record is mixed. Some of the most successful examples of "gray area"<sup>4</sup> stabilization in the 1960s and 1970s occurred in intensive code enforcement areas.<sup>5</sup> Yet,

---

1. L. FRIEDMAN, *GOVERNMENT AND SLUM HOUSING* 4-7 (1968).

2. NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY: REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS* 274 (1968).

3. *Id.*

4. Gray areas typically are "areas of aging and unattractive but non-slum housing. They are suburbs of the past, built in the first three decades of the century and now obsolete." H. KOHLER, *ECONOMICS AND URBAN PROBLEMS* 79 (1973).

5. McGrew & Bates, *Code Enforcement: The Federal Role*, 14 *URB. LAW.* 1 (1982).

housing code enforcement often has proved inadequate as a mechanism for dealing with problem properties. Judgments over time remain disappointingly and uniformly negative. In 1966, two authorities, Judah Gribetz and Frank Grad, wrote: "The enforcement of housing codes . . . has failed in recent years to halt or reverse urban blight."<sup>6</sup> In 1979, Albert Walsh, commenting on the efficacy of housing code enforcement, concluded that it was "an inefficient and ineffective process, a condition not peculiar to New York City but existent generally in municipalities throughout the nation."<sup>7</sup> A 1983 symposium on housing codes also noted the uneven success of code enforcement as a strategy for dealing with problem urban buildings.<sup>8</sup>

When the shortcomings of housing codes became apparent, explanations and remedies were sought. At first, the housing code mechanism was deemed the problem. National task forces and similar studies conducted over the past two decades pointed to a number of attendant problems: courts were reluctant to impose criminal sanctions; penalties, in the form of fines and similar assessments, were often less than the costs of compliance; court calendars were overloaded, therefore, delays were commonplace; housing code standards sometimes were unrealistically demanding; and administration on the part of officials typically was lax or inconsistent.<sup>9</sup>

These problems evoked numerous remedial changes.<sup>10</sup> Civil penalties, which courts were more likely to impose, were added to the

---

6. Gribetz & Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1255 (1966).

7. Walsh, *Housing Code Enforcement in New York City—Another Look at an Administrative Tribunal*, 17 URBAN L. ANN. 51, 55 (1979).

8. *Code Enforcement: Issues and Answers for the 80's*, 60 U. DET. J. URB. L. 349 (1983) (symposium addressing code enforcement in several cities).

9. See *id.* See also U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT/AMERICAN BAR ASSOCIATION, *SPECIALIZED COURTS: HOUSING JUSTICE IN THE UNITED STATES* (1981); COMPTROLLER GENERAL OF THE UNITED STATES, *ENFORCEMENT OF HOUSING CODES: HOW IT CAN HELP TO ACHIEVE NATION'S HOUSING GOAL* (1973).

10. See J. SLAVET & M. LEVIN, *NEW APPROACHES TO HOUSING CODE ADMINISTRATION* (1969); Burke, *Redrafting Municipal Housing Codes*, 48 J. URB. L. 933, 942-50 (1971); Landman, *Flexible Housing Code—The Mystique of the Single Standard: A Critical Analysis and Comparison of Model and Selected Housing Codes Leading to the Development of a Proposed Model Flexible Code*, 18 HOW. L.J. 253, 298-346 (1974); Comment, *Housing Codes and the Prevention of Urban Blight—Administrative and Enforcement Problems and Proposals*, 17 VILL. L. REV. 490, 505-22 (1972).

traditional criminal sanctions. Other types of sanctions also were explored.<sup>11</sup> For example, in 1974, California disallowed deductions such as interest, taxes, and depreciation for state income taxes on buildings with serious code deficiencies.<sup>12</sup> Finally, improvements in both the code and its administration were attempted. These improvements included tailoring zoning codes to different neighborhood conditions, consolidating administrative responsibility in one city department, and establishing separate housing courts.<sup>13</sup>

These changes improved matters by making the penalty for housing code non-compliance surer, faster, and more severe. Unfortunately, these reforms were activated just when a new urban phenomenon appeared: increasing numbers of property owners began to neglect, and often abandon, parcels with marginal economic value. The codes' sanctions had little force against these owners. Jerome Rothenberg, Albert Schaaf, and George Sternlieb were among those studying this phenomenon in the 1960s.<sup>14</sup> A decade later, their predictions of abandonment, and the futility of housing code enforcement to prevent abandonment, became a reality.

Because housing codes and their sanctions were ineffective against problem properties abandoned by their owners, a new class of more responsible owners was needed. Beginning in the 1970s, cities turned to property tax foreclosure as a major means of acquiring and controlling problem properties.

#### B. *Property Tax Foreclosure as a Strategy for Responding to Problem Properties*

Property tax foreclosure is a procedural remedy for tax delinquency. It consists of three major components: 1) an initial proceeding or tax sale; 2) redemption; and 3) title perfection. Delinquent taxes constitute a lien on the real property against which they are assessed. After a period of time, interest in the property is transferred through an initial proceeding or public notification commonly referred to as a tax sale. After the sale, there is a specified redemption

---

11. See Miller, *Code Enforcement: An Overview*, 60 U. DET. J. URB. L. 349, 358-60 (1983).

12. *Id.* at 361-62; Walsh, *supra* note 7, at 55.

13. Miller, *supra* note 11, at 364, 368.

14. J. ROTHENBERG, *ECONOMIC EVALUATION OF URBAN RENEWAL* 32-57, 241-42 (1967); A. SCHAAF, *ECONOMIC ASPECTS OF URBAN RENEWAL: THEORY, POLICY AND AREA ANALYSIS* (1960); G. STERNLIEB, *THE TENEMENT LANDLORD* (1966).

period during which the delinquent taxpayer may redeem his property by paying back taxes together with any required interest, penalties, and costs. If redemption is not exercised, title passes from the delinquent taxpayer to the person that holds the tax lien through a title perfection or foreclosure procedure. The subsequent titleholder may be a private party, the municipality, the county, or the state.

Owners of problem properties are often interested only in maximizing short-term profits and not in securing a long-term holding. Consequently, many owners are delinquent in paying taxes and their buildings are acquired via property tax foreclosure. The acquiring party is typically a public body lien-holder—for example, a city or county—because problem parcels attract little interest from private investors. Studies conducted in Boston, Newark, Cleveland, and other communities with abandonment problems have explored the local government's taking role.<sup>15</sup>

In order to make foreclosure a more effective taking mechanism, numerous jurisdictions have adopted reforms shortening the redemption period and allowing for in rem, rather than in personam, jurisdiction. In 1975, Ohio passed legislation permitting in rem taking in Cleveland.<sup>16</sup> Properties belonging to owners that are delinquent in paying taxes for at least three years can be joined in one suit and foreclosed. The county prosecutor first must file a complaint specifying the parcel number, street address, parcel description, name and address of the last owner, amount of taxes owed, and other information. Within thirty days after filing this complaint, the court clerk is required to publish a notice of foreclosure once a week for three consecutive weeks. After proper notice is given, the foreclosure trial, court finding, and foreclosure sale all can be completed within sixty to ninety days, compared to the multi-year process under the previously prevailing in personam process.

The Ohio Act was modeled after Missouri's foreclosure statute, en-

---

15. See D. LISTOKIN, *THE DYNAMICS OF HOUSING REHABILITATION: MACRO AND MICRO ANALYSES* (1973); Note, *Tax Sale in New Jersey: A Re-examination*, 26 RUTGERS L. REV. 266, 280-83 (1973); Memorandum to the Collector-Treasurer of the City of Boston, *The Tax Title Process in Boston* (Jan. 2, 1976). See also B. LAKE & F. JAMES, *THE MAGNITUDE AND DETERMINANTS OF PROPERTY TAX DELINQUENCY IN PITTSBURGH* (1974); J. LAWLOR, *REAL PROPERTY TAX DELINQUENCY AND URBAN LAND POLICY* (1978); S. OLSON & M. LACHMAN, *TAX DELINQUENCY IN THE INNER CITY* (1976).

16. See generally Linner, *Cleveland is Banking Tax Delinquent Land*, 7 PRACTICING PLANNER 9 (1977).

acted in 1971.<sup>17</sup> Missouri law permits St. Louis and Kansas City to apply in rem foreclosure to properties owned by persons whose taxes are delinquent for one year. The city selects about five hundred parcels at one time for in rem action. It petitions for a joined suit; the court then renders final judgment and title is transferred to the Municipal Land Reutilization Authority.

New York's in rem process has been the most extensively used in the country. The in rem foreclosures are implemented in borough-by-borough "sweeps" on properties owned by persons whose taxes are delinquent for at least one year. In practice, most of the parcels are delinquent for longer periods of time. The finance department first prepares a serialized list of tax delinquent accounts per borough. The in rem action is then filed with the county clerk, and proper notice is given to the property owners. Unless a parcel is withdrawn from the impending action because of redemption (arrearage paid in full) or a workout agreement (partial payment period) the foreclosure action then is finalized. The entry of a final judgment of foreclosure vests legal title to the property in the city, and has the effect of extinguishing all preexisting liens.

Property tax foreclosure can be, and has been, a potent mechanism for dealing with problem buildings. By divesting title from negligent owners, foreclosure effectively reallocates the problem parcel to a new, more responsible owner or caretaker that will provide proper maintenance. Numerous municipalities have used foreclosure for this control purpose. Yet, tax foreclosure has many disadvantages as a strategy for dealing with problem properties.

### 1. Foreclosure is Not Always Applicable

In Cleveland, for example, many owners of abandoned parcels continue to satisfy property tax obligations because the local property tax is relatively low. Owners, therefore, are willing to pay property taxes to avoid losing their buildings via foreclosure. In other instances, the use of in rem or fast-take procedures is restricted. Ohio's in rem procedure generally is limited to vacant lots; buildings must be foreclosed by regular tax-taking procedures.

### 2. Foreclosure is a Passive Strategy

Foreclosure must "wait" for tax-delinquent properties and hope

---

17. MO. REV. STAT. § 92.700 (1969).

that the condition of these parcels, as well as their location, will be conducive for stabilization or reuse. Foreclosure is passive in another sense as well. The foreclosure mechanism typically is administered by the county, rather than the municipality. The county, concerned with the upkeep of both urban and suburban areas within its boundaries, may not be sensitive to the special foreclosure needs of cities. This occurred in Cleveland, where recalcitrant county officials thwarted the application of the accelerated foreclosure process.

### 3. Foreclosure is a Time-Consuming Method

Even with the in rem process, a period of at least one to three years can elapse from initial tax delinquency to final title perfection. The ability to recondition the problem property may be lost during this time period.

### 4. Large-Scale Foreclosure Can Impose Significant Management Operating Demands

Selective use of foreclosure often is not permitted because this practice raises legal questions concerning equal treatment of property owners. If foreclosure is employed, it must be employed against all delinquent parcels. Because cities often have thousands of these properties, many of which need substantial repair or do not generate enough rent to cover their expenses, foreclosure can occasion the municipality to become the "owner of last resort" of a large, economically marginal property portfolio.

This problem is demonstrated aptly in New York City. New York has reduced greatly property acquisition time delays through expeditious foreclosure methods, but at the same time has acquired many properties of minimal short-term economic value.<sup>18</sup> After shortening its in rem process, New York soon began to acquire thousands of parcels via foreclosure. As of 1984, approximately one hundred thousand housing units had been foreclosed and approximately fifty thousand occupied units were being operated by municipal agencies. These buildings were difficult and expensive to manage. Municipal repair and maintenance of these units costs New York a considerable portion of its total Community Development Block Grant allotment.

---

18. R. BURCHELL & D. LISTOKIN, *ADAPTIVE REUSE HANDBOOK* 145 (1981).

C. *Local Resident and Neighborhood Group Response to Problem Properties*

The discussion of responses to problem properties thus far has focused on the public sector: local government's code enforcement and foreclosure proceedings. It has not touched upon private responses by local residents and neighborhood groups. Their role also is important.<sup>19</sup>

Local residents have been potent players in the urban revitalization scene in recent years. Concerned residents, often organized in neighborhood development organizations, engage in a multiplicity of activities ranging from housing rehabilitation to economic development and job training.<sup>20</sup>

While neighborhood groups are important contributors to urban revitalization, their role vis-a-vis problem properties often must follow the public sector's response. With few exceptions, initiation of code enforcement is at the discretion of a public agency. Similarly, local neighborhood groups typically must await city property tax foreclosure or similar taking action before they can manage, rehabilitate, or deal with problem properties in other ways.

Numerous legal scholars have examined ways by which private residents and groups may, on their own initiative, participate more actively in the regulation and control of problem buildings.<sup>21</sup> Examples include actions in mandamus to force public officials to perform their ministerial duties—for example, initiating tax foreclosure and enforcing housing codes—private enforcement of public laws such as through the appointment of private attorneys general to enforce housing codes, and allowing parties affected by problem buildings to bring nuisance actions and other similar suits against negligent property owners. Such delegation of initiative and authority to private groups, however, has not gone beyond the legal analysis stage. In

---

19. See generally McClaughry, *Recycling Declining Neighborhoods: Give the People a Chance*, 10 *URB. LAW.* 318 (1978).

20. See, e.g., U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD), *NEIGHBORHOODS: A SELF-HELP SAMPLE* (1979); HUD, *NEIGHBORHOOD PRESERVATION—A CATALOG OF LOCAL PROGRAMS* (1975).

21. See generally Gill, *Nuisance Recovery as a Means to Stop Residential Housing Abandonment*, 45 *UMKC L. REV.* 9 (1976); McClaughry, *supra* note 19, at 331; Note, *A Nuisance Law Approach to the Problem of Housing Abandonment*, 85 *YALE L.J.* 1130 (1976).

most jurisdictions, the response to problem properties must start with a public body or agency electing to take action.

In the absence of public response, private action often is difficult. A neighborhood group's attempt to purchase an abandoned, yet still privately owned, building is illustrative. Private acquisition of problem parcels cannot even commence until the owner is identified and located—a difficult task with inner-city reality.<sup>22</sup> Because of barriers to private action, neighborhood group and local resident frustration in acquiring problem properties is very real.<sup>23</sup>

In sum, neighborhood groups' efforts to respond to problem parcels often are thwarted. These efforts, such as rehabilitation or management of problem properties, typically must follow the public initiative in the form of a tax foreclosure and the like. Such relegation of local private activity to a secondary role means that the initiative and vigor of neighborhood organizations is neither fully nor quickly realized.

#### D. *Strategies for Dealing with Problem Properties: Summary*

The strategies discussed thus far are important, proven mechanisms for dealing with problem parcels. Yet, all have certain drawbacks. Housing code sanctions have little force and effect in situations of near or actual abandonment. Although foreclosure offers the advantage of control, it is a lengthy, non-targeted procedure. Neighborhood group involvement is a potent resource, but does not have the power to initiate revitalization programs.

---

22. McLaughry, *supra* note 19, at 331-32.

23. Local resident frustration is evident in the following description of Union-Miles and other Cleveland neighborhoods:

At block club meetings residents speak of a sense of paralysis and frustration as they watch a vacant house, stripped by vandals, go on the City's demolition list. Thousands of such homes have been lost in Cleveland's neighborhoods over the past 10 years. . . . For Mrs. Versie Avery, a homeowner on Cleveland's southeast side, the problem was an abandoned house that had stood vacant for a year and a half—an eyesore and a hazard to the neighborhood. For Cleveland's community development corporations, the problem was the organization's inability to locate the owners of abandoned houses crucial to revitalization efforts. For example, the abandoned property confronting Mrs. Avery, 9814 Anderson Avenue, was owned by an individual who died intestate, leaving at least 10 known heirs. The heirs are widely dispersed geographically, and have been generally unwilling to sell or repair the property.

*Union-Miles Proposes Receivership Remedy for Abandoned Buildings*, 1 OHIO CDC NEWS 1, 1 (Fall 1983).

Other strategies for dealing with problem parcels have similar drawbacks. These have been explored at length in *The Adaptive Re-use Handbook*,<sup>24</sup> which explains that cities can exert control over problem buildings by purchase or eminent domain. Yet, these techniques are time-consuming and require expensive initial outlays for the purchase and condemnation award, as well as possible long-term maintenance expenses. Except on a spot basis, no major city has considered seriously the use of purchase or eminent domain as strategies to gain control of problem parcels.

Cities also have attempted to gain control by encouraging the donation of properties. Philadelphia has implemented a Vacant Gift Property Program in which abandoned parcels are donated to city agencies. A donation strategy also has drawbacks: it requires a willing donor, may necessitate outlays for maintenance albeit not for purchase, and may be subject to time-consuming legal restrictions in many jurisdictions.

Because all of the approaches discussed thus far have had limited success, additional techniques should be considered. Any new proposal obviously should not include the drawbacks of existing strategies. In sum: 1) The program should offer control of the problem parcel; 2) such control should be effected in a relatively expeditious fashion; 3) control should be selective and targeted rather than universal; and 4) resident and neighborhood group initiative and input should be encouraged.

Housing receivership may offer these attributes. Housing receivership, therefore, deserves consideration as an additional strategy for dealing with problem parcels.

#### E. *Housing Receivership as a Strategy for Dealing with Problem Properties*

Receivership, in the case of problem buildings, represents an attempt to preserve a deteriorating asset while protecting the rights of tenants, the general public, and other interested parties.<sup>25</sup> In instances of severe building disrepair, when the parcel was a danger or a nuisance to its occupants or nearby residents, a petition for the appointment of a receiver would be filed with the court. If a receiver is

---

24. R. BURCHELL & D. LISTOKIN, *supra* note 18, at 215.

25. See Levi, *Focal Leverage Points in Problems Relating to Real Property*, 66 COLUM. L. REV. 275, 280-83 (1966) (advocating appointment of a receiver).

appointed, he would manage the property in his care and abate the hazardous conditions. Expenses would be paid from the building's profits with any shortfall constituting a lien on the property. The property owner would be asked to satisfy the receiver's claim; refusal could result in the receiver foreclosing the lien and, therefore, assuming ownership. Receivership offers a number of significant advantages as a strategy for responding to problem buildings.<sup>26</sup>

### 1. Property Control

A receiver retains a significant level of control over a problem parcel. The receiver may enter the premises, abate the hazardous conditions evoking the receivership action, collect rents and profits, and generally manage and maintain the building (for example, provide heat, services, repairs, and pay taxes, insurance, and other expenses). In certain instances, the receiver may go beyond merely abating code violations and improve and rehabilitate the parcel. Thus, a receiver retains nearly as much power as the actual property owner. If the property owner fails to repay the receiver, the receiver can foreclose and become the actual, not just the de facto, owner. In sum, receivership affords a considerable level of control, and possibly even ownership, of problem parcels.

### 2. Expeditious Control

Property tax foreclosure also affords control over, and ownership

---

26. For discussions of the receivership remedy, see F. GRAD, LEGAL REMEDIES FOR HOUSING CODE VIOLATIONS 42-56 (1968); Grad, *New Sanctions and Remedies in Housing Code Enforcement*, 3 URB. LAW. 577, 581-82 (1971); Gribetz, *New York City's Receivership Law Seen as Essential Code Enforcement Weapon*, 6 J. HOUS. 297 (1964); Gribetz & Grad, *supra* note 6, at 1272-75; Marco & Mancino, *Housing Code Enforcement—A New Approach*, 13 CLEV. ST. L. REV. 368, 375-83 (1969); Moerdler, Debot, Quick, Castrataro & Weidenfeld, *A Program for Housing Maintenance and Emergency Repair: Proposed by the Department of Buildings of the City of New York*, 42 ST. JOHN'S L. REV. 165, 170-72 (1967); Rosen, *Receivership: A Useful Tool for Helping to Meet the Housing Needs of Low Income People*, 3 HARV. C.R.-C.L. L. REV. 311 (1968); Weitzman, *Neighborhood Preservation in New York City*, 3 FORDHAM URB. L.J. 425, 443-45 (1975); *Receivership of Problem Buildings in New York City and Its Potential for Decent Housing of the Poor*, 9 COLUM. J.L. & SOC. PROB. 309 (1973) (symposium); Note, *The New York City Housing Receivership and Community Management Programs*, 3 FORDHAM URB. L.J. 637 (1975); Note, *Preference Liens for the Costs of Repairing Slum Property*, 1967 WASH. U.L.Q. 141; Comment, *Receiver's Certificates—Valid First Liens for Slum Rehabilitation*, 3 U. ILL. L.F. 379 (1970); Recent Development, *Prior Lien on Rents and Profits Upheld as a Method of Financing Repairs—In re Department of Buildings*, 63 MICH. L. REV. 1304 (1965).

of, problem buildings. Foreclosure, however, is inapplicable to properties current in their taxes. Even when foreclosure is applied, it is a time-consuming process, taking at least one to two years. This span is too long for vulnerable, inner-city real estate. In contrast, receivership can be effected more expeditiously. Appointment of a receiver should take no more than one to two months. Consequently, receivership can be applied quickly to stem further deterioration of problem parcels.

### 3. Selective Control

If receivership was applied to the full universe of deteriorated properties, receivers soon would be overwhelmed by the financial and administrative problems of dealing with large numbers of marginal residential units. This is the same shortcoming that occurs with property tax foreclosures; it acts upon so many properties that the taking becomes unmanageable.

Appointment of a receiver, however, is an extraordinary remedy. Specific hazardous conditions in each case must be described, a separate application submitted, mortgagees and other interested parties notified, a special court order issued, and a careful accounting of expenses made. This item-by-item specification discourages the mass processing of buildings and stems from the courts' willingness to grant a receivership only when fully justified, procedurally correct, and sensitive to extant property rights.<sup>27</sup> Given this framework, receivership is applied on a case-by-case basis. At one time, tailored application of receivership was viewed as a drawback, but today, with the volume of tax foreclosure as a sobering lesson, the limited scale of receivership is an asset. Receivership lends itself to a targeted and tailored approach befitting existing resources.

### 4. Local Resident and Neighborhood Input

Receivership encourages initiative and vigor on the part of local residents and neighborhood groups. Many parties can initiate receivership. In addition to city officials, a petition for receivership can be brought by tenants if the problem building is occupied, by neighboring owners or residents affected by the neglected property, as well as by neighborhood organizations. Service as a receiver also is open to city departments, tenants, neighborhood not-for-profit groups, and

---

27. See *infra* notes 122-49 and accompanying text.

the like. Unlike code enforcement and tax foreclosure, where the initiative and implementation are largely in the hands of local government, receivership encompasses more neighborhood input.

These advantages merit the consideration of receivership as an additional strategy for dealing with problem buildings. The next section describes receivership's legal framework and the final section introduces model receivership legislation and administrative practice.

### III. HOUSING RECEIVERSHIP: THE LEGAL FRAMEWORK— NATIONAL STATUTORY SURVEY AND CASE ANALYSIS

Housing receivership of deteriorated urban properties is no longer an experimental or demonstration procedure, but rather has entered the legal mainstream. This statement is based on a national statutory and case analysis conducted by the Center for Urban Policy Research (CUPR). This section examines the body of receivership law. Initially, the section surveys receivership statutes and details their overall framework and procedural provisions. It concludes with a brief review of how the courts have viewed the receivership process, particularly with respect to existing property rights.

#### A. *National Statutory Survey*

The CUPR national statutory search identified sixteen state receivership enabling laws, replete with detailed requirements and procedures. It is important to recognize their common elements. The CUPR has organized these elements according to a flowchart of the receivership process: 1) triggering conditions—the applicable circumstances bringing about receivership; 2) the triggering agent—who initiates the process; 3) the receivership agent—who is appointed as the receiver; 4) receivership process and notification—the specific procedural steps for the appointment of a receiver, including adequate notification to interested parties; 5) receivership duties and powers—the receiver's obligations and authorized activities; 6) receivership financing and compensation—reimbursement for the receiver's expenses; and 7) receivership discharge—the process for terminating receivership.

The receivership statutes that the CUPR examined address these flowchart components.<sup>28</sup> Each of these elements is examined in detail.

---

28. See Exhibit 1, *infra*, at p. 86; Appendix, *infra*, at p. 117.

## 1. Receivership Statutes

To date, ten states have enacted a total of sixteen statutes authorizing housing receivership: Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, and New York.<sup>29</sup>

Most of the states with receivership laws are situated in the Northeast and the Midwest. Many of them contain major urban core cities, with an aging and deteriorating housing stock. States apparently have enacted receivership legislation in response to building obsolescence and neighborhood blight. It is not surprising that the areas of the country containing the most aged of the nation's housing stock have taken the lead in establishing legal procedures to address the problem of structural obsolescence.

Four of these ten states have enacted multiple receivership statutes. Connecticut, Illinois, and New York each have passed two receivership statutes while New Jersey has four. This overlay allows for different receivership formats. One Connecticut statute<sup>30</sup> limits the initiation of receivership to a city agency, while another extends the receivership remedy to tenants.<sup>31</sup> Illinois has one law that provides for receivership as a city-initiated action in the case of a dangerous

---

29. See 1965 Conn. Pub. Acts 554, 1969 Conn. Pub. Acts 728 (codified as amended at CONN. GEN. STAT. §§ 47a-14-14g, 47a-56-56k (1983)); 58 Del. Laws 472 ch. 63 (1958) (codified as amended at DEL. CODE ANN. tit. 25, §§ 5901-07 (1974)); 1961 Ill. Laws 1133 (codified as amended at ILL. ANN. STAT. ch. 24, § 11-13-15 (Smith-Hurd Supp. 1983)); 1961 Ill. Laws 1166-67 (codified as amended at ILL. ANN. STAT. ch. 24, §§ 11-31-1, 11-31-2 (Smith-Hurd Supp. 1983)); 1981 Ind. Acts 309 (codified as amended at IND. CODE ANN. §§ 36-7-9-1 to 36-7-9-28 (Burns 1981)); 1975 Md. Laws 414 (codified as amended at MD. REAL PROP. CODE ANN. § 8-211 (1981)); 1965 Mass. Acts 898 (codified as amended at MASS. ANN. LAWS ch. 111, §§ 127A-127K (Michie/Law Co-op. Supp. 1983)); 1973 Minn. Laws 611 §§ 13-28 (codified as amended at MINN. STAT. ANN. §§ 566.18-566.33 (West Supp. 1984)); 1969 Mo. Laws 537 (codified as amended at MO. ANN. STAT. §§ 441.500-441.610 (Vernon Supp. 1984)); 1966 N.J. Laws 168 (codified as amended at N.J. STAT. ANN. §§ 2A:42-75 to 2A:42-84 (West Supp. 1984)); 1971 N.J. Laws 224 (codified as amended at N.J. STAT. ANN. §§ 2A:42-85 to 2A:42-97 (West Supp. 1984)); N.Y. MULT. DWELL. LAW § 309(5)a-g (McKinney 1974); N.Y. REAL PROP. ACTS LAW §§ 769-82 (McKinney Supp. 1983).

Since the writing of this Article, the State of Ohio has enacted a receivership statute. H.B. 706, Dec. 1984 (emergency legislation). The Ohio statute incorporates much of the language of the proposed statute presented in this Article. See *infra*, at pp. 105-07.

30. CONN. GEN. STAT. §§ 47a-14 to -14g (1983).

31. CONN. GEN. STAT. §§ 47a-56 to -56k (1983).

Exhibit 1  
Housing Receivership: National Statutory Framework — Overview

Jurisdiction/ Statute	Triggering			Implementation			Compensation
	Applicable Circumstances	Who Initiates	Agent	Notification	Duties/Powers	Financing	
Connecticut §§ 47a-14-14g	Tenement, nuisance	City	Court appointed	Personal, mail, posting	Rents, repairs, management	Rents, city loan, bond	Fee
Connecticut §§ 47a-56-56k	Tenement, code violations	Tenants	Court appointed	Action filed	Rents, repairs	NS	NS
Delaware §§ 5901-5907	Rental, immediately dangerous	Tenants	State	Action filed	Rents, repairs, management	Rents, lien	Fee
Illinois § 11-31-1-2	Dangerous, abandoned, code violation	City	City appointed	Personal, mail	Rents, repairs	Rents, lien, certificate	NS
Illinois § 11-13-15	Code violation	City, neighbors	NS	Written	Repairs	NS, legal costs recoverable	NS
Indiana § 36-7-1-28	Unsafe building	City	Non-profit, appointed	Personal, newspaper, mail	Rents, repairs	Rents, certificate	Fee
Maryland § 8-211-211.1	Leased, single/multifamily unit, hazard	Tenants	Appointed	Mail	Rents, repairs	Rents	NS
Massachusetts Ch. 111, § 127A-K	Residential building unit for human habitation	Tenants, city	Appointed	Personal, mail, posting	Rents, repairs	Rents, lien, state loan	NS
Minnesota §§ 556.18-53	Code/contract violations	Tenants	Appointed	Personal, mail, posting	Rents, repairs, management	Rents, city loan	NS
Missouri § 441.500-610	Code violations constitute hazard	City, tenants	City appointed	Personal, mail	Rents, repairs, management	Rents, lien (rents), certificate	NS
New Jersey §§ 2A-42-85-97	Multifamily, unfit for human habitation	City, tenants	City appointed	Personal, posting	Rents, repairs	Rents	Fee
New Jersey §§ 2A-42-75-84	Multifamily, harmful condition	City	City	NS	Rents, repairs, management	Rents	No Fee
New Jersey §§ 54-4:123	Tax delinquent 6+ months	City	City appointed	NS	Rents, management	Rents	No Fee

Exhibit 1 (Cont'd)  
Housing Receivership: National Statutory Framework — Overview

Jurisdiction/ Statute	Triggering			Implementation			Compensation
	Applicable Circumstances	Who Initiates	Agent	Notification	Duties/Powers	Financing	
New Jersey § 40:48-2.12a-k	20+ units, harmful condition	City	City	Personal, posting	Rents, repairs, management	Rents, city loan	No fee
New York § 309(5)a-g	Multifamily, nuisance	City	City	Personal, mail, posting	Rents, repairs, management, rehab	Rents, city loan, lien	Fee
New York §§ 769-782	Multifamily, dangerous	City, tenants	City	Personal, mail, posting	Rents, repairs, management	Rents	Fee (outside NYC)

Notes:

- Appointed
- Agency/person appointed by court
- City
- Municipal authority
- Management
- Operates building
- Neighbors
- Within 1,200 feet of hazardous building
- NS
- Not specified
- Rents
- Collects rents
- Repairs
- Makes repairs
- Rehab
- Rehabilitates property

or abandoned structure,<sup>32</sup> while another Illinois law permits receivership in a broader array of situations.<sup>33</sup> The four New Jersey receivership statutes allow both cities and tenants to bring an action in cases ranging from owner negligence in providing needed maintenance to delinquency in property tax payments.<sup>34</sup> The sixteen statutes are examined below in sequence of the flowchart elements.

## 2. Applicable Circumstances

In defining the conditions under which an action may be brought, the receivership statutes define building type and, more importantly, building condition. Some of the state receivership laws limit the remedy to certain building types, typically multifamily or rental structures.<sup>35</sup> Connecticut specifies tenements; Delaware, rental properties; New Jersey, multifamily buildings.<sup>36</sup> Maryland requires that the dwelling be leased.<sup>37</sup> Most other jurisdictions do not indicate a building type, but require that the structure be used for residential purposes.<sup>38</sup> In short, receivership is a remedy aimed at improving living conditions, often, albeit not always, in a multifamily or rental context.

The receivership statutes also specify the building condition under which an action may be brought. In some cases, these statutes are relatively general or open-ended. Minnesota authorizes receivership in cases when there exists "a violation of an oral or written agreement, lease or contract for the rental of a dwelling . . . ."<sup>39</sup> Illinois permits receivership if owners or tenants of real property within twelve hundred feet of the building against which the action is brought can show that the alleged violations will affect substantially their property or person.<sup>40</sup> New Jersey authorizes receivership when

32. ILL. ANN. STAT. ch. 24, §§ 11-31-1 to -2 (Smith-Hurd Supp. 1983).

33. *Id.* § 11-13-15.

34. N.J. STAT. ANN. §§ 2A:42-75 to -84 (West Supp. 1984); *id.* §§ 2A:42-85 to -97; *id.* §§ 40:48-2.12a to k; *id.* §§ 54-4:123 to 54-4:132.

35. *See* Exhibit 1, *supra*, at p. 86.

36. CONN. GEN. STAT. § 47a-14 (1983); DEL. CODE ANN. tit. 25, § 5901 (1974); N.J. STAT. ANN. § 2A:42-86(d) (West Supp. 1984).

37. MD. REAL PROP. CODE ANN. §§ 8-211(c), 8-211.1 (1981).

38. *See* Exhibit 1, *supra*, at p. 86.

39. MINN. STAT. ANN. §§ 566.18(6)(c), 566.25(c) (West Supp. 1984).

40. ILL. ANN. STAT. ch. 24, § 11-13-15 (Smith-Hurd Supp. 1983).

conditions harmful to the general public exist.<sup>41</sup>

Receivership sometimes can be initiated in response to a violation of the housing code or a similar code violation. Minnesota authorizes receivership when dwellings violate health, safety, fire, or other codes;<sup>42</sup> Massachusetts authorizes receivership when residential buildings violate "any board of health standards";<sup>43</sup> and Connecticut authorizes receivership when "housing code violations" exist.<sup>44</sup> One of the two Illinois statutes authorizes receivership when a building fails to conform either to the overall local "minimum standards of health and safety" or to the special standards required by a "conservation plan where a structure is located in a conservation area."<sup>45</sup> In some instances, receivership is authorized only if code violations are of such a serious magnitude that they threaten life and limb.<sup>46</sup>

Receivership is a severe measure. Therefore, it is not alarming that most states limit its application to situations when a building is in an advanced state of disrepair and immediate remediation is necessary. State receivership statutes often stipulate that an action can be brought only when a building is "dangerous," is a "nuisance," or is a "safety hazard." Connecticut authorizes receivership when a nuisance exists that constitutes a serious fire hazard or constitutes a serious threat to life, health, or safety.<sup>47</sup> Delaware law refers to conditions "imminently dangerous to the life, health, or safety of the tenant."<sup>48</sup> Indiana's statute mentions impaired conditions that make the building unsafe, a fire hazard, a hazard to the public health, a public nuisance, or dangerous.<sup>49</sup> In addition to authorizing receivership in the instance of a code violation, Massachusetts law also indicates that the action may be triggered when a residential building is unfit for human habitation, or may endanger or materially impair the

---

41. N.J. STAT. ANN. § 40:48-2.12h (West 1967).

42. MINN. STAT. ANN. §§ 566.18(6)(a), 566.25(c) (West Supp. 1984).

43. MASS. ANN. LAWS ch. 111, § 127H (Michie/Law Co-op. Supp. 1983).

44. CONN. GEN. STAT. §§ 47a-14a, 47a-58 (1983).

45. ILL. ANN. STAT. ch. 24, § 11-31-2 (Smith-Hurd Supp. 1983).

46. Missouri, for example, permits receivership when there is a "violation of provisions of the housing code applying to the maintenance of the building or dwelling unit which, if not promptly corrected, will constitute a fire hazard or a serious threat to the life, health, or safety of occupants." MO. ANN. STAT. §§ 441.500(10), 441.570, 441.590(1)(2) (Vernon Supp. 1984).

47. CONN. GEN. STAT. § 47a-14a (1983).

48. DEL. CODE ANN. tit. 25, § 5901(2) (1974).

49. IND. CODE ANN. § 36-7-9-4 (Burns 1981).

tenants' health or well-being or the public's health or well-being.<sup>50</sup>

In some instances, the statute lists the specific conditions constituting a nuisance, threat, or danger. Maryland, for example, authorizes receivership in cases when specified conditions or defects constitute "a fire hazard or a serious and substantial threat to the life, health or safety of occupants."<sup>51</sup>

The Maryland legislation has an interesting property condition feature found in some of the receivership statutes. In addition to authorizing receivership when a hazardous condition already exists, receivership also is allowed when a dangerous state may be reached absent prompt remediation.<sup>52</sup> While a number of other jurisdictions have similar provisions,<sup>53</sup> receivership usually is allowed only to correct conditions that already constitute a nuisance or hazard. This linkage to extant dangerous conditions is understandable, given the inherent severity of receivership.

All the laws referred to thus far view receivership as a remedy to correct property disrepair, although they contain diverse interpretations of what constitutes a state of disrepair. In addition, one of the New Jersey statutes authorizes receivership on sound buildings, provided the owner has been delinquent in paying property taxes for at least six months.<sup>54</sup> This represents a unique application of receivership, one that authorizes early public control of tax delinquent parcels, instead of merely correcting property hazards.

### 3. Receivership Triggering

A receivership action, typically in the form of a complaint that a building is poorly maintained, may be brought by a government

---

50. MASS. ANN. LAWS ch. 111, § 127H (Michie/Law. Co-op. Supp. 1983).

51. MD. REAL PROP. CODE ANN. §§ 8-211, -211.1 (1981). These conditions include:

(1) Lack of heat, electricity, or of hot or cold running water; . . . or (2) [l]ack of adequate sewage disposal facilities; or (3) [i]nfestation of rodents in two or more dwelling units; or (4) [t]he existence of paint containing lead pigment on surfaces within the dwelling unit; or (5) [t]he existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants; or (6) . . . any condition which presents a health or fire hazard. . . .

*Id.*

52. *Id.* § 8-211.

53. *See, e.g.*, MASS. ANN. LAWS ch. 111, § 127B (Michie/Law. Co-op. Supp. 1983); MO. ANN. STAT. § 441.500(10) (Vernon Supp. 1984).

54. N.J. STAT. ANN. § 54-4-123 (West 1960).

agency or in some cases, by private individuals. In twelve of the sixteen receivership statutes, a government agency initiates the action.<sup>55</sup> In some statutes, the agency's identity is not specified. Connecticut refers to a "public authority";<sup>56</sup> Illinois to a "local municipal authority";<sup>57</sup> and Indiana to an "enforcement authority."<sup>58</sup> In other states, the exact public agent is specified. For example, in Massachusetts, receivership is triggered by the Board of Health<sup>59</sup> and in New York, by the Municipal Department of Code Enforcement.<sup>60</sup> Whether identified or not, the municipal agency's decision to bring a receivership action usually is left to its own administrative discretion. One of the New Jersey statutes,<sup>61</sup> which requires that the municipal governing body approve each receivership application, is the only exception.

Receivership is an action that usually is brought by municipal authorities, but tenants often are similarly empowered. Eight of the sixteen receivership statutes give tenants the right to initiate receivership action.<sup>62</sup> In jurisdictions allowing tenant-initiated receivership, usually a provision exists that limits nuisance actions by requiring that a significant share of the tenants support the application. Connecticut requires that a majority of a building's tenants request receivership,<sup>63</sup> New York<sup>64</sup> and Missouri<sup>65</sup> require a one-third consensus.

Municipal authorities and tenants are logical candidates to trigger receivership actions. There are, however, other possible groups. Tenants in, and owners of, buildings adjacent to a deteriorating structure certainly are affected if the structure continues to be neglected or is ultimately abandoned. Illinois recognizes the right of these neighboring residents and owners to request receivership.<sup>66</sup>

---

55. See Exhibit 1, *supra*, at p. 86.

56. CONN. GEN. STAT. § 47a-56a (1983).

57. ILL. ANN. STAT. ch. 24, §§ 11-13-15, 11-31-1, 11-31-2 (Smith-Hurd Supp. 1983).

58. IND. CODE ANN. § 36-7-9-17 (Burns 1981).

59. MASS. ANN. LAWS ch. 111, § 127B (Michie/Law. Co-op. Supp. 1983).

60. N.Y. MULT. DWELL. LAW, § 309(5) a-g (McKinney 1974).

61. N.J. STAT. ANN. § 2A:42-80 (West Supp. 1984).

62. See Exhibit 1, *supra*, at p. 86.

63. CONN. GEN. STAT. § 47a-14a (1983).

64. N.Y. REAL PROP. ACTS LAW § 770(1) (McKinney Supp. 1983).

65. MO. ANN. STAT. § 441.510(2) (Vernon Supp. 1984).

66. ILL. ANN. STAT. ch. 24, § 11-13-15 (Smith-Hurd Supp. 1983). An owner or tenant of property within 1200 feet of the deteriorating building in question may insti-

In sum, a survey of the sixteen state receivership laws reveals that local public agencies usually initiate receivership actions. Tenants also are frequently empowered to bring an action. In one state, neighborhood residents or owners may bring receivership actions.

#### 4. Receivership Agent

Once a building has qualified for the appointment of a receiver, the court appoints a receiver in a manner consistent with provisions of the state statute. Variations concerning who may serve as a receiver are illustrated in Exhibit 1. Five of the sixteen receivership statutes make no provision as to who may serve, nor do they guarantee that a court will appoint a receiver. For instance, in Massachusetts the courts appoint a "person, partnership or corporation" to act as receiver.<sup>67</sup> Receivership statutes generally specify who may be the receivership agent. In five statutes a court can appoint only a local public agency or individual—health inspector, code enforcer, or housing official; in five other statutes, a court can appoint either a public entity or another competent party to act as receiver.<sup>68</sup> For example, New Jersey law provides for the courts to appoint as receiver the public official that initiated action against the building.<sup>69</sup> That person in turn may appoint a first mortgagee as the receiver's agent if the party is willing to serve as an agent. If the first mortgagee refuses, then provision is made for the appointment of "any competent person."<sup>70</sup>

Minnesota law also permits dual—public or other party—receivership agents.<sup>71</sup> It excludes, however, certain parties: the owner of the building in disrepair, the inspector, the complaining tenant, or any other person living in the complaining tenant's dwelling unit.

Only Indiana's receivership statute expressly authorizes the appointment of a not-for-profit housing corporation.<sup>72</sup> Indiana law provides that the courts may appoint as receiver a not-for-profit cor-

---

tute an appropriate action or proceeding if he or she shows that the alleged statutory violation will affect substantially his or her property.

67. MASS. ANN. LAWS ch. 111, § 1271 (Michie/Law. Co-op. 1975).

68. See Exhibit 1, *supra*, at p. 86.

69. N.J. STAT. ANN. § 2A:42-79 (West Supp. 1980).

70. *Id.* § 2A:42-80.

71. MINN. STAT. ANN. § 566.29(1) (West Supp. 1984).

72. IND. CODE ANN. § 36-7-9-20(2) (Burns 1981).

poration or "any other capable person residing in the county."<sup>73</sup>

### 5. Nature of the Receivership Process

A receivership petition usually has no priority over other actions before the court in which it is pending. Some states, however, provide for exceptions. Connecticut,<sup>74</sup> Illinois,<sup>75</sup> Missouri,<sup>76</sup> and New York<sup>77</sup> accord the receivership petitions priority over other actions. For example, Connecticut law gives the receivership show-cause order "precedence over every other business of the civil docket of the superior court."<sup>78</sup>

While some variation exists between states regarding the details of the process for appointing a receiver, most states have adopted the following procedures. Notice of the pending receivership action is given to parties interested in the deteriorating property—the owner, mortgagee, and other lienholders. In addition, there usually is a determination as to whether receivership is necessary. At this determination proceeding, interested parties may contest the action on numerous grounds by arguing that the property is habitable, that the petitioning tenant or tenants are responsible for the violations, or that the hazardous conditions cannot be corrected due to forces outside the property owner's control.

The receivership process in Delaware illustrates this procedure.<sup>79</sup> Tenants bring action against all interested parties duly disclosed, or whose interest is a matter of public record, or whose interest is capable of being affected by the proceeding.<sup>80</sup> Those defendants can contest the action by claiming: 1) The conditions alleged in the petition filed by tenants do not exist; 2) the conditions were caused by willful or grossly negligent acts of one or more petitioning tenants; or 3) the conditions would have been corrected were it not for the refusal of the petitioning tenant to allow reasonable access.<sup>81</sup> If the court determines that receivership is appropriate, then an order for appointment

---

73. *Id.*

74. CONN. GEN. STAT. § 47a-56a (1983).

75. ILL. ANN. STAT. ch. 24, § 11-31-2 (Smith-Hurd Supp. 1983).

76. MO. ANN. STAT. § 441.520(5) (Vernon Supp. 1984).

77. N.Y. MULT. DWELL. LAWS § 309(5)(c)(3) (McKinney 1974).

78. CONN. GEN. STAT. § 47a-56c(a) (1983).

79. DEL. CODE ANN. tit. 25, §§ 5901-05 (1974).

80. *Id.* § 5902.

81. *Id.* § 5903.

is made. First, however, one last chance usually is extended to the interested parties to correct the hazardous conditions.<sup>82</sup> If this remediation is not forthcoming, the mortgagee even may be given the first right of refusal to act as the receiver. If the mortgagee refuses, an outside receiver is appointed as specified by law.<sup>83</sup>

## 6. Receivership Notification

Appointment of a receiver affects the rights and privileges of the building's owner, mortgagees, and remaining lienors. Consequently, it is very important that the courts give notice of the pending action to these individuals.

Who should be given notice? Most of the state receivership statutes refer generally to "interested parties," but some contain a more specific reference that includes a short list of the property owner, mortgagee, and other lienors of record. Some statutes set forth a more detailed elaboration. Indiana provides that notice be served to owners or others with "substantial property interest."<sup>84</sup>

How is notice given to the "interested parties?" Two states, Connecticut<sup>85</sup> and Delaware,<sup>86</sup> give notice simply through the official filing of the action. Connecticut requires tenants to file a notice of the pendency of the receivership action in the local land records.<sup>87</sup> Generally, notice is given by more direct means. Personal delivery is the most direct form of notice. It is often difficult to accomplish this, however, when inner-city realty is involved, because the property owner may be a corporate shell, and other interested parties are difficult to locate. Consequently, almost all the state receivership statutes call for a first attempt at personal notice. If personal service is impos-

---

82. *Id.* § 5904(a).

83. *Id.* § 5904(c).

84. IND. CODE ANN. § 36-7-9-11 (Burns 1981). A substantial property interest is defined as:

[A]ny right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate, a future interest, a present possessory interest, or an equitable interest of a contract purchaser. In a consolidated city, the interest reflected by a deed, lease, license, mortgage, land sale contract or lien is not a substantial property interest unless [certain recording provisions are met].

*Id.* § 36-7-42.

85. CONN. GEN. STAT. § 47a-14a(c) (1983).

86. DEL. CODE ANN. tit. 25, § 5905 (1974).

87. CONN. GEN. STAT. § 47a-14a(c) (1983).

sible after "due search" or "diligence," the statutes then permit less stringent forms of notice. These in rem types of notice include: Mailing notice to the last known address of the interested parties; newspaper publication of the pending action in the local journal of record; or posting notice in a prominent place on the building or on the tenants' entrance doorway. One of the Connecticut statutes,<sup>88</sup> for example, specifies that personal service be given to the interested parties—property owner, mortgagees of record, and lienors. If interested parties cannot, with "due diligence," be personally served, in rem notification is permitted by posting a copy of the show-cause order "in a conspicuous place on the property where the nuisance exists," sending a registered letter to the interested parties of record at their "address set forth in the last recorded deed," and newspaper publication.<sup>89</sup> The Connecticut statute further provides that when hazardous conditions pose "imminent danger," attempts at personal notification are not required and instead posting and mailing suffices.<sup>90</sup>

## 7. Receiver's Duties and Powers

The receiver usually is empowered to: 1) Enter and take charge of the property in disrepair; 2) abate the nuisance, hazardous conditions, or code violations; 3) operate and manage the building, including letting contracts as necessary and paying expenses such as taxes and insurance; and 4) collect rents and take steps to finance incurred expenses.

Receivership statutes differ considerably in the level of detail with which they specify the receiver's duties and powers. Some statutes are very brief or general. For example, Illinois law provides only that the receiver is authorized to effect "demolition, repair, or enclosure as required."<sup>91</sup> Massachusetts is similarly general.<sup>92</sup> It empowers the receiver to collect rents, profits, and funds to improve the property in order for the property to meet the standards of "fitness for human habitation."<sup>93</sup>

---

88. *Id.* §§ 47a-56 to -56j.

89. *Id.* § 47a-56b(c).

90. *Id.* § 47a-56b(d).

91. ILL. ANN. STAT. ch. 24, §§ 11-31-1, -2 (Smith-Hurd Supp. 1983).

92. MASS. ANN. LAWS ch. 111, § 127I (Michie/Law. Co-op. 1975).

93. *Id.*

At the other end of the spectrum are laws that list in almost point-by-point detail the many activities that a receiver can perform. Delaware's statute,<sup>94</sup> for example, indicates that the housing receiver has "all the powers and duties accorded a receiver foreclosing a mortgage on real property and all other powers and duties deemed necessary by the court."<sup>95</sup> The statute then enumerates that these powers and duties include, but are not necessarily limited to: 1) Collecting and using all rents and profits of the property; 2) correcting the hazardous conditions evoking the receivership; 3) complying with all applicable state or local building and construction codes; 4) paying all expenses reasonably necessary for the property's operation and management; 5) compensating the tenants for "whatever deprivation of their rental agreement rights resulted from conditions evoking receivership"; and 6) paying the costs of the receivership proceeding.<sup>96</sup>

Most other state receivership statutes are not as detailed as the Delaware law. Nonetheless, the statutes are more elaborate than the general statutes in Illinois and Massachusetts.<sup>97</sup> These statutes often mention that a housing receiver has the same powers as other types of receivers—regarding, for example, tax or mortgage foreclosure—and then lists some of these powers. For instance, a receiver in New Jersey is similar to receivers collecting delinquent taxes.<sup>98</sup> The New Jersey statute refers to housing receiver activities such as collecting property rents and income, making repairs to remove hazardous conditions, and securing the payment of delinquent taxes, penalties, interest costs, and expenses. Interestingly, the statute speaks of a further general grant of power. It states that the court has the jurisdiction "to make such orders and directions to the receiver as may be necessary to effectuate the purposes of this act and to conserve real property during the pendency of the receivership."<sup>99</sup>

New York law also confers a broad grant of authority on the housing receiver similar to that accorded to a "receiver appointed in an action to foreclose a mortgage on real property."<sup>100</sup> The New York statute then lists numerous housing receiver duties such as letting

---

94. DEL. CODE ANN. tit. 25, §§ 5901-07 (1974).

95. *Id.* § 5906.

96. *Id.*

97. MO. ANN. STAT. § 441.590 (Vernon Supp. 1984).

98. N.J. STAT. ANN. § 2A:42-82 (West Supp. 1984).

99. *Id.*

100. N.Y. MULT. DWELL. LAW § 309(5)(d) (McKinney 1974).

contracts, removing nuisances, operating the property, and paying maintenance and other building expenses. A unique feature of New York's law deserves mention. While all other state receivership statutes merely authorize the abatement of the hazardous conditions eliciting the receivership action, the New York law empowers a greater degree of building upgrading. It authorizes the receiver to "make other improvements to effect a rehabilitation of the property, in such fashion as is consistent with maintaining safe and habitable conditions over the remaining useful life of the dwelling."<sup>101</sup>

## 8. Receivership Financing

How are the receiver's expenditures financed? Nearly all of the state receivership statutes authorize the receiver to finance his expenditures from the property's rent, other income, and profits.<sup>102</sup> Because the receiver's expenses may exceed the building's cash flow, additional financing sources must be secured.

The state receivership laws provide for a variety of income sources. New Jersey law allows the receiver to draw from a defaulted performance bond posted by the property owner.<sup>103</sup> Connecticut's statute, on the other hand, permits the municipality to advance "any required sums and thereupon shall have a lien against the property having priority with respect to all existing mortgages or liens,"<sup>104</sup> as well as authorizing the receiver to collect "accrued and accruing rents" to finance repairs. In addition, Connecticut provides for a housing receivership revolving fund—the Tenant's House Operating Fund—to help finance the receiver's expenses.<sup>105</sup> This fund consists of locally appropriated monies and state advances-in-aid. If the operating fund is insufficient, the receiver's expenses "may be met from the proceeds of a municipal bond sale."<sup>106</sup>

Massachusetts law also allows the receiver to draw first from the building's rents and profits.<sup>107</sup> If these funds are insufficient the receiver may petition the court to apply for financial assistance from the state. The court will advance this financing if it is necessary, rea-

---

101. *Id.*

102. *See* Exhibit 1, *supra*, at p. 86.

103. N.J. STAT. ANN. § 2A:42-93(c) (West Supp. 1984).

104. CONN. GEN. STAT. §§ 47a-56d(c), (d) (1983).

105. *Id.* §§ 47a-56i(a), 47a-56 (1983).

106. CONN. GEN. STAT. § 19-347h (1983).

107. MASS. ANN. LAWS ch. 111, § 127J (Michie/Law. Co-op. 1975).

sonable, and "not so excessive as to constitute an imprudent and unreasonable expenditure to accomplish this purpose."<sup>108</sup> Any amount, plus interest, that the court advances constitutes a debt due to the state by the owner, recoverable in a contract action, and constitutes a lien on the receivership property.

New York law also authorizes multisource receiver financing. The receiver collects rents and profits for repairs and maintenance.<sup>109</sup> In the case of a shortage, the state allows the Municipal Department of Real Estate to advance to the receiver "any sums required to cover such costs and thereupon has a lien against the property."<sup>110</sup> This advance constitutes a lien that is given "priority over all other mortgages, liens, and encumbrances of record except taxes and assessments levied pursuant to law."<sup>111</sup> The public monies that the Department advances to the receiver come from a Municipal Dwelling Section 309 Fund. This fund consists of amounts appropriated by the Municipal Board of Estimate or a similar body. The Department of Real Estate maintains the Section 309 Fund in a separate account. The receiver repays these loans to the Section 309 Fund from the property's proceeds. In the event that the amount in the fund is insufficient for these purposes, the receiver's expenses may be met from the proceeds of the sale of municipal bonds.<sup>112</sup>

As another source of financing, the receiver may obtain a loan from a private lender, or similar source, on the security of the receivership lien. The promissory note signed by the receiver in exchange for the loan is termed a receivership certificate. While the receiver probably has the equitable power to offer a receivership certificate, only three states specifically authorize the issuance of receivership obligations. The three states are Illinois,<sup>113</sup> Indiana,<sup>114</sup> and Missouri.<sup>115</sup> Missouri's provision permits numerous financing sources. The receiver, with the approval of the circuit court, may borrow money against, and encumber, the property as security in such amounts as may be necessary to defray expenses. In addition, the

---

108. *Id.*

109. N.Y. MULT. DWELL. LAW § 309(5)(d)(1) (McKinney 1974).

110. *Id.*

111. *Id.* § 309(5)(e).

112. *Id.* § 309(9).

113. ILL. ANN. STAT. ch. 24, § 11-31-2 (Smith-Hurd Supp. 1983).

114. IND. CODE ANN. § 36-7-9-20(a) (Burns 1981).

115. MO. ANN. STAT. § 441.590(6) (Vernon Supp. 1984).

circuit court may authorize the receiver to issue receiver's certificates as security against such borrowing. These certificates are authorized expressly as investments for banks and savings and loan associations.

Indiana's provision is similar.<sup>116</sup> The receiver first must draw from the property's rents and profits. After a hearing, the court may authorize the receiver to obtain the money needed by the issuance and sale of notes or receiver's certificates bearing interest rates fixed by the court.<sup>117</sup> These documents constitute a lien on the hazardous property and its income has priority over all other assignments of rents, liens, mortgages, and other encumbrances, except taxes.

In sum, the receiver always must turn to the property's rents or income first. If these funds are insufficient, then public advances in the form of a loan or bond issue may be available. And, in some instances, the statutes give the receiver express authority to borrow funds on the strength of a receivership certificate. The security for the receiver's loan or certificate constitutes a lien placed on the receivership property. This claim enjoys priority over other encumbrances, except property taxes. The receiver's lien is enforced by a proceeding to foreclose, as in the case of a mortgage or mechanic's lien.

## 9. Receiver Compensation and Discharge

Only a handful of the state receivership statutes address the issue of receiver compensation. Typically, they allow "reasonable or standard commissions." Connecticut law provides that the receiver is entitled to a "reasonable fee, to be determined by the court."<sup>118</sup> Indiana legislation provides that the receiver is entitled to the "same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages."<sup>119</sup>

Although not specifically a receiver's fee, the Illinois compensation provision<sup>120</sup> permits the court, in its discretion, to "allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney." If the court finds that the plaintiff's action has a basis in fact, "this allowance [becomes] part of the costs of litigation assessed

---

116. IND. CODE ANN. § 36-7-9-20(a) (Burns 1981).

117. *Id.*

118. CONN. GEN. STAT. § 47a-56f(a) (1983).

119. IND. CODE ANN. § 36-7-9-20(a)(7) (Burns 1981).

120. ILL. ANN. STAT. ch. 24, § 11-13-15 (Smith-Hurd Supp. 1983).

against the defendant and recovered as such.”<sup>121</sup>

The court discharges the receiver when the receiver’s work is done: when the receiver repairs the property, satisfies financial claims, makes an accounting of expenditures, and so on. Most of the receivership statutes fail to elaborate on this point.

### B. *Case Analysis: Detailed Review*

Thus far the analysis has focused on the framework of receivership statutes. The following discussion briefly reviews the leading cases concerning receivership. While in years past, courts sometimes declared receivership statutes unconstitutional on the ground that they abrogated property rights,<sup>122</sup> modern courts are willing to affirm receivership actions provided<sup>123</sup> that they are applied in a suitable circumstance.<sup>124</sup> A suitable circumstance exists when a receivership action is brought in connection with severely deteriorated buildings in need of a caretaker, adequate notice is given to interested parties, and these parties are given the opportunity to contest the basis of the receivership petition or make repairs.

Challengers have attacked receivership statutes in the courts as unconstitutionally taking property without due process, and as unconstitutionally impairing the contract obligation owed to interested parties. The taking argument is based on the allegation that some receivership procedures fail to give interested parties notice of the impending action, an opportunity to make repairs, or a sufficient time period or an opportunity to show cause why the court should not place the property in the hands of a receiver. The contract impairment charge is premised on the allegation that a receivership lien, if given first claim status, subordinates the existing property interests of the prior lien-holders.

Courts upheld these claims for many years. In 1937, New York

---

121. *Id.*

122. For a discussion of arguments that receivership statutes are unconstitutional, see *In re Dep’t of Bldgs.*, 14 N.Y.2d 291, 298-300, 200 N.E.2d 432, 237-38, 251 N.Y.S.2d 441, 447-49 (1964). See *infra* text accompanying notes 131-38.

123. *Community Renewal Found., Inc. v. Chicago Title & Trust Co.*, 44 Ill. 2d 284, 296, 255 N.E.2d 908, 915 (1970). See *infra* text accompanying notes 139-47.

124. *City of Chicago v. Westphalen*, 93 Ill. App. 3d 1110, 1126, 418 N.E.2d 63, 76 (1981), *cert. denied and appeal dismissed*, 455 U.S. 996 (1982). See *infra* text accompanying notes 148-49.

enacted a law establishing a receivership program.<sup>125</sup> The law empowered the Municipal Building Department to order improvements in old law tenements. If the owner failed to heed this order within three weeks, the municipality could make the improvements by appointing a receiver. The legislation accorded the receiver's expenses priority over other encumbrances, except for taxes and assessments.

In 1938, the New York Court of Appeals declared New York's receivership statute unconstitutional. In *Central Savings Bank v. City of New York*,<sup>126</sup> the court held that the receivership provisions adversely affected the mortgagee's interest.<sup>127</sup> The court further declared that the statute violated the mortgagee's constitutional guarantee of due process.<sup>128</sup> In addition, the court held that the provision that gave the receiver's expenses first lien status abrogated the mortgagee's claim and, therefore, constituted a taking.<sup>129</sup>

Modern courts have tended to reject the arguments and conclusions propounded in *Central Savings Bank* for several reasons. First, a serious decline in the quality of the central city housing stock makes the case for receivership more compelling. Second, legislative bodies have taken greater care to ensure that existing property rights are protected when receivership is used. Third, modern courts are willing to accept greater public intervention with respect to private property rights. These factors characterize New York's 1962 receivership program.<sup>130</sup> In 1964, that program survived a constitutional attack in *In re Department of Buildings*.<sup>131</sup>

Under New York's receivership program, when the municipality certifies that a nuisance constituting a serious fire hazard or threat to life or safety exists in a multiple dwelling, a written order can be issued directing that the nuisance be eliminated within a specified time. If the owner fails to comply with this order, the municipality

---

125. 1937 N.Y. Laws ch. 353.

126. 279 N.Y. 266, 18 N.E.2d 151 (1938), *remittur adm.*, 280 N.Y. 9, 19 N.E.2d 659, *cert. denied*, *City of New York v. Central Sav. Bank*, 306 U.S. 661 (1939).

127. 279 N.Y. at 275, 18 N.E.2d at 154.

128. *Id.* at 277, 18 N.E.2d at 155. The court found that the mortgagee was not given the opportunity for a proper hearing to question the reasonableness or the amount of the lien placed upon the mortgaged property. *Id.*

129. *Id.* at 278, 18 N.E.2d at 155. The court held that the priority given to the receiver's expenses constituted a taking because the expenses superseded the lien of the mortgage and subordinated the rights of the mortgagee. *Id.*

130. 1962 N.Y. Laws ch. 492.

131. 14 N.Y.2d 291, 200 N.E.2d 432, 251 N.Y.S.2d 441 (1964).

can apply to the New York Supreme Court for a show-cause order why the court should not appoint a receiver. The statute provides that the court notify all interested parties of the pending action and give them a final opportunity to make the repairs necessary to forestall receivership. If the court appoints a receiver, the receiver's expenses are accorded prior lien status on the property's rents and profits; not, as in 1937, on the fee itself.

Affirming the constitutionality of New York's 1962 receivership law in *Department of Buildings*, the New York Court of Appeals held that the receivership procedure did not violate due process. The 1962 provision ensured that all interested parties would be given notice and ample opportunity to forestall the action by contesting its basis or making repairs.<sup>132</sup>

The New York Court of Appeals also concluded that the new receivership program did not unconstitutionally impair the mortgagee's contractual rights. The legislature was warranted in using its police power to authorize receivership as a means to "promote the public interest in the maintenance of an adequate supply of safe and sanitary housing accommodations,"<sup>133</sup> a more pressing concern in 1962 than in 1937. In a situation of warranted public intervention, "private interests embodied in contracts are made subservient to the interests of the public for whom the state exercises its . . . power."<sup>134</sup> In addition, the 1962 statute poses less of a threat to contractual rights than the 1937 statute. Unlike its predecessor,<sup>135</sup> the 1962 statute gives the receiver's lien priority status only with respect to the property's rents and profits—not against the fee itself. Based on these arguments, the court concluded that the State's exercise of its police power to protect a vital public interest did not interfere unreasonably with the mortgagee's property rights.<sup>136</sup>

Shortly after the *Department of Buildings* decision, the New York

---

132. *Id.* at 299-301, 200 N.E.2d at 438-39, 251 N.Y.S.2d at 448-49. The court noted that a 1962 law enacted by the state legislature obviated a due process objection. The 1962 Act provided that a receiver's lien will only have priority if the mortgagee is given proper notice of the order directing removal of the nuisance as well as notice of the Building Department's application for the appointment of a receiver. In addition, the mortgagee may question the reasonableness of a receiver's expenses when the receiver submits his account to the court. *Id.*

133. *Id.* at 297, 200 N.E.2d at 436, 251 N.Y.S.2d at 446.

134. *Id.* at 298, 200 N.E.2d at 437, 251 N.Y.S.2d at 447.

135. *Id.* at 300, 200 N.E.2d at 438, 251 N.Y.S.2d at 449.

136. *Id.* at 301, 200 N.E.2d at 439, 251 N.Y.S.2d at 449.

Legislature broadened the scope of the statute. In 1965, the legislature amended section 309 to give the receiver's outlays first lien status on the property, and not just on rents and profits.<sup>137</sup> In the same year, the legislature gave the section 309 receiver the additional power to make all necessary repairs and rehabilitation.<sup>138</sup> These amendments were not challenged in court and remain part of New York's receivership program today.

In 1970, the Illinois Supreme Court addressed the constitutionality of receivership in *Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.*<sup>139</sup> In Illinois, when a tenement owner fails to respond to an injunction requiring compliance with a housing ordinance, a court of equity may take remedial action, including the appointment of a receiver. The receiver can draw from the property's rents and profits, and can issue receivership certificates.<sup>140</sup> In 1965, an amendment to the Illinois Municipal Code elevated these certificates to first lien status on the fee.<sup>141</sup> This change provoked numerous legal challenges<sup>142</sup> including: 1) A court of equity did not have the power to appoint a receiver in situations of building disrepair; 2) receivership violated due process and contractual rights; and, 3) the rehabilitation of the property in the case at hand went beyond eligible receivership powers.

In *Community Renewal Foundation*, the Illinois Supreme Court upheld the statute's receivership provisions.<sup>143</sup> The court declared that an equity court has the inherent power to appoint a receiver to obtain compliance with building codes when the property has become unsafe.<sup>144</sup> Concerning the challenge that receivership abrogated contractual obligations, the court, consistent with *Department of Buildings*, argued that this obligation was not immune to modifica-

---

137. 1965 N.Y. Laws ch. 144 (codified as amended at N.Y. MULT. DWELL. LAW §§ 309(4)(a), 309(5)(e) (McKinney 1974)).

138. 1965 N.Y. Laws ch. 919 (codified as amended at N.Y. MULT. DWELL. LAW § 309(5)(d)(1) (McKinney 1974)).

139. 44 Ill. 2d 284, 255 N.E.2d 908 (1970).

140. ILL. REV. STAT. ch. 24, § 11-31-2 (Smith-Hurd Supp. 1983).

141. *Id.*

142. See Comment, *supra* note 26, at 384-85.

143. 44 Ill. 2d 284, 255 N.E.2d 908 (1970).

144. *Id.* at 291, 255 N.E.2d at 913. The court also noted that an equity court may properly exercise its power to appoint a receiver to preserve and restore residential property to accommodate urgent housing needs. *Id.* at 291, 255 N.E.2d at 913.

tion if required to protect the public interest.<sup>145</sup> The court justified the extension of first lien status to the receiver's certificates, arguing that anything less would diminish significantly the value and marketability of these certificates.<sup>146</sup>

The court also addressed the issue of whether the receiver should be granted the power to rehabilitate the property, not just abate existing conditions. The *Community Renewal Foundation* court affirmed the receiver's rehabilitation power. The court asserted that, in practice, the exact difference between "code level" and "rehabilitation" was difficult to define. Even if this distinction was possible, the rehabilitation of a deteriorated property is an acceptable activity under the governing receivership legislation.<sup>147</sup>

A 1981 Illinois Appellate Court decision, *City of Chicago v. Westphalen*,<sup>148</sup> is another important case in Illinois receivership law. *Westphalen* involved an appeal of a receivership action initiated by both the City of Chicago and neighbors to a deteriorated property. The neighbors brought suit under the Illinois receivership statute. The receivership action was contested on several grounds: the right to appoint a receiver, the propriety of private action to initiate the mechanism, and the subject of recoverable costs. The Illinois Appellate Court, citing *Community Renewal Foundation*, reaffirmed the right of an equity court to appoint a receiver to remedy deteriorated housing conditions.<sup>149</sup>

In *Westphalen*, the court also considered whether a private right of action to initiate receivership exists. The appellate court ruled that a private right exists under Illinois law. The court upheld the neighbors' contention that they were entitled to reasonable costs and attorney's fees incurred in bringing the receivership action.

*Department of Buildings, Community Renewal Foundation, and*

---

145. *Id.* at 290, 255 N.E.2d at 912. "Where the state properly exercises [its] police power for the general welfare, even though contract and rights . . . are affected by its action, the exercise of this power is not an unconstitutional infringement of the contract clause." *Id.*

146. *Id.* at 291-92, 255 N.E. at 913. The court argued that the state legislature "conferred this preferred status on receivership certificates to enhance their marketability and to encourage . . . the rehabilitation of deteriorated housing." *Id.*

147. *Id.* at 296, 255 N.E.2d at 915. The court noted that it has reasonable discretion "to determine the repairs necessary to restore the buildings for acceptable use within the legislative design." *Id.*

148. 93 Ill. App. 3d 1110, 418 N.E.2d 63 (1981).

149. *Id.* at 1126-27, 418 N.E.2d at 76.

*Westphalen* strongly support receivership as a means to deal with deteriorated buildings. These decisions also uphold receivership program provisions that make receivership an effective remedy. Effective receivership provisions include: Extending first lien status to the receiver's expenses and certificates, allowing receivers to go beyond code compliance to effect rehabilitation, and expanding standing in order that "neighboring parties" to deteriorated buildings may bring receivership suits.

With the introduction to the background of housing receivership, and the examination of receivership's legal framework completed, it is important now to focus on future policy. If receivership is to be applied, legislatures must enact enabling legislation. To date, only ten states have enacted enabling legislation. Consequently, the third and final section of this Article presents and evaluates a model receivership statute.

#### IV. PROPOSED RECEIVERSHIP STATUTE AND ADMINISTRATIVE RECOMMENDATIONS

##### A. *Proposed Receivership Statute*

The proposed receivership statute is presented below. It is organized according to the flowchart elements of the receivership process.

##### Applicable Circumstances

The applicable circumstances include any residential building, whether occupied or abandoned, that 1) is unfit for human habitation; or 2) is a nuisance or cause of sickness, accident or harm to the occupants or to the public; or 3) poses a dangerous condition or serves as a substantial threat to the safety of the occupants or to the public because of violation of a statute or ordinance concerning building condition or maintenance.

##### Receivership Triggering

Proper local authorities of the municipality, or (one-third or majority of) the building's tenants, or any owner or tenant of real property within fifteen hundred feet in any direction of the hazardous or dangerous building who shows that his property or person is affected substantially or adversely by the alleged nuisance, or dangerous condition triggers the receivership process.

An owner or tenant need not prove any specific, special, or unique damages to himself or his property from the alleged nuisance or dangerous condition in order to maintain a suit under the foregoing provision.

If an owner or tenant files suit hereunder and the court finds

that conditions warrant the appointment of a receiver, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant property owner and may be recovered as such.

#### Receivership Agent

The receivership agent may be any proper local authority of the municipality (or tenant or group of tenants), a not-for-profit corporation (the primary purpose of which is the improvement of housing conditions), or any other capable or competent person or entity.

#### Nature of the Receivership Process

The nature of the receivership process is a judicial proceeding in municipal court or municipal housing court.

In addition to other remedies:

If, upon due investigation it is determined that hazardous or dangerous conditions exist, and the owner of such property or other interested parties (each mortgagee of record or other lienholders of record, and other persons having an interest), after due notice, fail to correct such hazardous conditions, application may be made to the municipal court in whose district said property is located for an injunction requiring the owner or other interested parties to correct such hazardous or dangerous conditions, or for such other order as the court may deem necessary or appropriate to secure such compliance.

In such proceeding, if the court finds that the building constitutes a public hazard and that the owner and other interested parties in such proceeding or prior thereto have been afforded reasonable opportunity to correct such violations and have refused or failed to do so, the court shall cause notice to be served upon the owner and other interested parties of the findings of the court, and an order to show cause why a receiver should not be appointed to perform such work and to furnish such material as may be reasonably required to abate such public nuisance. After such hearing, the court may appoint a receiver to take possession and control of such property. Such hearing and action will be expedited by the court and given precedence over all other suits.

#### Receivership Notification

Personal notice is served upon the owner and other interested parties. If after diligent search, the identity or whereabouts of these parties has not been found, notice is 1) mailed to last known person whose name appears on the last real estate assessment; 2) given by publication in the local newspaper; and 3) by posting in a prominent place on the hazardous building.

### Receiver's Duties and Powers

The receiver enters and takes charge of the premises, enters into agreements, lets contracts, and does any such acts as may be necessary to abate the nuisance, correct the dangerous and defective conditions, and operate and maintain the premises consistent with securing safe and habitable conditions. In addition to ordinary repairs and maintenance, the receiver may make other improvements to effect a rehabilitation of the property, in such fashion as is consistent with maintaining safe and habitable conditions over the remaining useful life of the dwelling.

The receiver is (is not) required to post bond. The receiver is (is not) required to solicit bids on work above — dollar amount. The receiver is required to keep written accounts itemizing receipts and expenditures.

### Receivership Financing

The receiver must draw first from the property's rent and profits. If this income is insufficient, the municipality may, if funds are available, advance any sums required and thereupon shall have a lien against the property having priority with respect to all existing mortgages or liens. The court may authorize further the receiver to obtain the money needed by the issuance and sale of notes or receiver's certificates bearing interest fixed by the court. These documents constitute a first lien on the property and its income. This lien is superior to all other assignments of rents, liens, mortgages, and other encumbrances on the property, except taxes and assessments. The receiver may obtain mortgage insurance for the receivership certificate from any agency of the federal or state government or other public authority. Such receivership certificates shall be an authorized investment for banks and savings and loan associations.

The liens incurred as a result of the receivership action may be enforced by proceedings to foreclose as in the case of mortgage or mechanics' liens.

### Receivership Compensation and Discharge

The court may allow the receiver a reasonable amount for fees and commissions.

The receiver is discharged upon rendering a full and complete accounting to the court as to the removal of the nuisance and hazardous conditions and the attendant incurred expenses and reimbursements.

## B. *Proposed Receivership Statute: Comments*

### 1. Applicable Circumstances

Housing receivership is designed to improve living conditions. Hence, the statute applies to "residential buildings." The statute expressly does not limit receivership to "multifamily" or "tenement" buildings as in some states because single-family or nontenement properties also may need a receiver's appointment. The statute also omits any distinction between occupied versus abandoned parcels; both categories of buildings may merit receivership. Opening the program to occupied properties, however, necessitates immediate rent collection, repair, and maintenance duties that are unnecessary in the case of abandoned structures. The decision whether to apply receivership to occupied buildings ultimately depends on available resources, such as sufficient personnel and financial backing.

Receivership is an extraordinary remedy. Therefore, it is important that it be targeted to compelling situations. In this light, the mere violation of *any* building standard is not sufficient cause for a receiver's appointment. Consequently, the proposed statute limits receivership to instances when a building is "unfit for human habitation," or is a "nuisance," or "cause of sickness, accident, or harm." Receivership may be applied in instances of housing or similar code violations only when these "pose a dangerous condition or serve a substantial threat to the safety of the occupants or to the public."

One final comment concerns the proposed statute's requirement that receivership be applied to remediate hazardous conditions that already exist, not those that may occur. A provision referring to hazardous conditions that may occur is nebulous. Future conditions cannot be predicted precisely. Application of receivership is challenging enough even when limited to the existing inventory of deteriorated properties.

### 2. Receivership Triggering

Most of the existing receivership statutes limit the group of potential plaintiffs to municipal departments or similar public agencies. This restriction means that the initiative of private parties is not drawn upon. It is preferable to permit private groups to bring a receivership action. Consequently, the proposed statute allows the municipality, or tenants (if the building is occupied),<sup>150</sup> or neighboring

---

150. To avoid nuisance actions by a single discontented tenant, the proposed stat-

affected parties to initiate receivership. Neighboring affected parties are defined as “any owner or tenant of real property within [fifteen hundred] feet in any direction of the hazardous or dangerous building who shows that his property or person is substantially or adversely affected by the alleged nuisance, or dangerous condition.”

How does a neighboring party show that “his property is substantially or adversely affected?” If the basis for actions by private parties must be specifically proved, then these actions will be severely restricted. In contrast, if a more general showing of damages is accepted—for example, an abandoned building by definition constitutes an adverse effect—then action by neighboring parties will be more frequent and more successful. The proposed statute has opted for the more general interpretation. The proposed law states that “an owner or tenant need not prove any specific or unique damages to himself or to his property from the alleged nuisance or dangerous condition in order to maintain a suit under the foregoing provisions.”<sup>151</sup>

### 3. Receivership Agent

The proposed statute authorizes multiple receivership agents for the same reasons cited for support for allowing private parties to initiate the receivership action. These agents include: The municipality; tenant or group of tenants—if the building is occupied; a not-for-profit corporation—that may or may not be limited to entities “the primary purpose of which is the improvement of housing conditions”; and an open-ended category—namely “any other capable or competent person or entity.”

### 4. Nature of the Receivership Process

While New York permits an administrative receivership proceeding, other jurisdictions utilize a judicial process. Given close scrutiny of receivership by the courts, a judicial procedure is preferable to avoid even the appearance of a taking. The proposed receivership statute therefore opts for a judicial approach.

---

ute requires that a sizeable share—one-third or a majority—of the tenants collectively agree on the receivership complaint.

151. ILL. ANN. STAT. ch. 24, § 11-13-15 (Smith-Hurd Supp. 1983). A receivership action is an expensive undertaking for private parties. Consequently, the proposed statute provides that the “court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff’s attorney.” *Id.*

*Central Savings Bank, Department of Buildings, and Community Renewal Foundation* illustrate the need to give interested parties—property owners, mortgagees, and others with liens or interests—notice and ample opportunity to make repairs to forestall the receiver’s appointment. The proposed statute gives affected individuals numerous opportunities. After determining that hazardous conditions exist, an injunction is issued “requiring the owner or other interested parties to correct such hazardous or dangerous conditions.” If remedial action is not pending, then notice of a court order regarding receivership is sent to those potentially affected. The basis of the order—the hazardous building conditions—can be defeated by the interested parties making repairs. The receiver is appointed only if the interested parties do not perform the repairs, and a hearing on the matter is conducted.

Time is of the essence to forestall rapid deterioration of the hazardous structure. Consequently, the proposed statute indicates that the “receivership hearing and action shall be expedited by the court and given precedence over all other suits.”

## 5. Receivership Notification

The previous discussion of receivership law underscored the importance of serving proper notice. That discussion also noted the practical difficulty of providing personal notification. Most state receivership statutes have addressed these two concerns by requiring a reasonable attempt at personal notice, while accepting less direct methods of giving notice if personal notice is unsuccessful. The proposed statute adopts a similar approach. While the proposed statute requires an initial attempt at personal notice, it provides for in rem notice in the event that personal notice proves unsuccessful.

## 6. Receiver’s Duties and Powers

Section two demonstrated that the receivership statutes range in the level of detail with which they specify the receiver’s duties and powers. The proposed statute adopts a moderate level of detail. It provides a list of particularly critical activities: entering and taking charge of the premises, entering into agreements, letting contracts, and so on. At the same time it also authorizes a general grant of power to abate the nuisance, correct the dangerous and defective conditions, and operate and maintain the premises in order to secure safe and habitable conditions.

The proposed statute also permits the receiver to go beyond code abatement in order to improve the property. In addition to ordinary repairs and maintenance, in the words of the New York statute, the receiver "is authorized to make other improvements to effect a rehabilitation of the property, in such fashion as is consistent with maintaining safe and habitable conditions over the remaining useful life of the dwelling."<sup>152</sup>

### 7. Receivership Financing

To foster successful financing, the proposed receivership statute authorizes multiple funding sources: the property's rents and profits; municipal loans, if authorized; and receivership certificates. The receiver's outlays that are not reimbursed from the property's rents or profits are accorded priority over all existing mortgages or liens, with the exception of taxes and assessments. This provision, upheld in *Department of Buildings and Community Renewal Foundation*, facilitates the receiver's financing from outside sources. The receivership certificate also is given first lien status. To enhance the attractiveness of these certificates, the proposed statute makes them "an authorized investment for banks and savings and loan associations," and authorizes the receiver to "obtain mortgage insurance for the receivership certificate from any agency of the federal or state government or other public authority."

### 8. Receivership Compensation and Discharge

As with many existing receivership statutes, the proposed statute "allow[s] the receiver a reasonable amount for fees and commissions." It indicates that the receiver is discharged when he satisfies the functions of his office—for example, when the hazardous conditions are abated, financial claims are satisfied, and an accounting is made of expenditures.

#### C. *Administrative Considerations*

Adoption of enabling legislation, such as that proposed above, is a key step in addressing the problem of neglected properties. After passage of a receivership statute, attention must be given to the administration of the law. While many administrative considerations

---

152. The proposed statute adopts the language of N.Y. MULT. DWELL. LAW § 309(5)a-g (McKinney 1974).

are imbued in the statutory provisions discussed previously, additional concerns deserve review.

### 1. Targeting of Receivership

The proposed receivership legislation can be applied to hundreds, if not thousands, of problem parcels. It is important not to attempt too much too soon. Failure to heed this precaution can lead to quick disappointment and an unfounded rejection of the receivership mechanism. Therefore, receivership should be targeted. This maximizes one of receivership's major advantages vis-a-vis tax foreclosure: the property taking and control is directed, rather than applied en masse. The decision to apply receivership to specific properties should be based upon considerations such as minimum neighborhood conditions, property traits, and local group presence.

#### a. *Neighborhood*

During the last decade growing attention has been paid to neighborhood classifications. A study conducted in the early 1970s established a five-stage classification scheme ranging from stage one ("strong") to stage five ("unhealthy").<sup>153</sup> Neighborhoods were ranked from one to five according to positive indications on a variety of neighborhood, housing condition, and socioeconomic variables. For example, a stage one neighborhood was one in which the housing stock was well maintained, vacancies were low, socioeconomic characteristics were stable, and neighborhood investments were regular and active. A stage five neighborhood contained numerous abandoned structures, changing socioeconomic characteristics, and significant short-term and long-term owner disinvestment.

The CUPR conducted a recent analysis that considered a four-stage neighborhood partition.<sup>154</sup> These stages<sup>155</sup> encompassed the following categories:

---

153. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, NEIGHBORHOOD PRESERVATION: A CATALOG OF LOCAL PROGRAMS (1975). See also R. GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE (1979).

154. R. BURCHELL & D. LISTOKIN, *supra* note 18, at 74.

155. See Exhibit 2, *infra*, at p. 114 for a detailed description of these stages.

Neighborhood Number	Classification
1	Poor Structure Condition - Weakening Market Neighborhoods
2	Good Structure Condition - Weakening Market Neighborhoods
3	Poor Structure Condition - Strengthening Market Neighborhoods
4	Good Structure Condition - Strengthening Market Neighborhoods

The specific classification scheme and terminology are not important. It is critical, however, to be sensitive to different neighborhood conditions and the need to apply appropriate remedies. While the receivership mechanism can be utilized everywhere, the need for the mechanism and the chances for its success are greater in certain areas. Under the CUPR neighborhood classification scheme, little cause for receivership will exist in neighborhood four because most properties in this area usually are well maintained. Neighborhood one, on the other hand, has significant need for receivership, because most buildings are well on their way to being abandoned. Yet, the very scale of the disinvestment in those buildings makes the successful application of receivership very difficult. In contrast, neighborhoods two and three both have the need for receivership, and a reasonable chance of success because these locations have underlying strength and viability. A receivership program must be sensitive to these varying neighborhood characteristics.

Exhibit 2

Neighborhood Classification Using Structure Conditions and Housing Market as Sorting Criteria

<p><b>GOOD STRUCTURE CONDITION-STRENGTHENING MARKET</b></p> <p>GOOD-TO-EXCELLENT UPKEEP OF STRUCTURES AND SURROUNDING PROPERTIES. LOW VACANCY, FEW UNDEVELOPED LAND SITES. AGGRESSIVE BIDDING IN TERMS OF RENTS AND PURCHASE PRICES PAID FOR STRUCTURES. LOW TURNOVER, HIGH DEMAND STRUCTURES.</p> <p>(4)</p>	<p><b>GOOD STRUCTURE CONDITION-WEAKENING MARKET</b></p> <p>REASONABLY GOOD UPKEEP OF STRUCTURES AND SURROUNDING PROPERTIES; EMERGING STRUCTURE VACANCY, OCCASIONAL VANDALISM TO UNOCCUPIED PROPERTIES. SCATTERED PARCELS OF SURPLUS VACANT LAND. MARKET DEMAND DECREASING FOR THE NEIGHBORHOOD. SITE OF GROWING REQUIREMENTS FOR INSURED, PURCHASE-MONEY MORTGAGES.</p> <p>(2)</p>	<p>↑ + STRUCTURE CONDITION - ↓</p>
<p><b>POOR STRUCTURE CONDITION-STRENGTHENING MARKET</b></p> <p>VISIBLE DETERIORATION OF OCCUPIED AND UNOCCUPIED PROPERTIES, MODERATE SHARE OF UNOCCUPIED STRUCTURES ABANDONED AND VANDALIZED. VISIBLE AGGREGATES OF SURPLUS VACANT LAND DUE TO PAST STRUCTURE DEMOLITION. SPECULATION BEGINNING TO OCCUR, CONVENTIONAL MORTGAGES AND LOANS MORE COMMON.</p> <p>(3)</p>	<p><b>POOR STRUCTURE CONDITION-WEAKENING MARKET</b></p> <p>SIGNIFICANT DISREPAIR OF MOST STRUCTURES. NUMEROUS STRUCTURES VACANT/ABANDONED. OBVIOUS VANDALISM AND ARSONOUS FIRES. SIGNIFICANT CLEARED CONTIGUOUS LAND AREAS DUE TO PAST DEMOLITION. LITTLE OR NO PRIVATE DEVELOPMENT ACTIVITY; SITE OF PUBLIC INSTITUTIONAL REDEVELOPMENT.</p> <p>(1)</p>	
<p>← + PRIVATE MARKET - →</p>		

Source: Rutgers University Center for Urban Policy Research, Winter 1980.

b. *Property and Other Factors*

Receivership administrators should be aware of other distinctions. Certain types of buildings are more difficult to repair and manage than others. While these will differ by city and neighborhood, typically single-family structures are easier to rehabilitate than multifamily dwellings. In addition, certain multifamily categories often are more problematic than others. These dwellings include smaller buildings incapable of supporting on-site or professional management and structurally deficient properties, such as walk-up or tenement-style buildings. Finally, occupied parcels are more difficult to manage and rehabilitate than their abandoned counterparts. While

receivership can be applied in difficult circumstances, the demands of application must be recognized.

The presence of neighborhood and similar groups with a likely interest in receivership is another important consideration. Receivership does not work well from afar. Local input is important to effective receivership targeting. For example, receivership should be targeted at a hazardous building that threatens the stabilization of a key anchor block. Local participation, in the form of neighborhood groups acting as receivers, ensures an agent with local ties as well as the energy and competence to complete successfully the needed repairs or rehabilitation.

In sum, numerous characteristics must be considered when implementing a receivership program. These characteristics include the neighborhood condition, property traits, and local group presence.

## 2. Program Packaging

Before implementing a receivership mechanism, it is important to have in place as many of the supportive processes and agents as possible. Legal documents should be prepared, receivership agents identified, knowledgeable contractors reserved, and construction financing and long-term take-out loans committed.

Financing is an especially critical element. Applied selectively, receivership can be an economically sound undertaking because most costs are recoverable. Despite this, financing often is difficult to secure, especially if the receiver is a community group with an unproven credit record or few tangible assets. A revolving municipal loan, funded from Community Development Block Grants, provides one possible source of financing. Not all cities, however, have the means or will to provide such receivership support. Many cities are experiencing financial difficulties and are wary of creating revolving loan funds, which they fear will not revolve. Therefore, we must turn our attention to the private sector.

Receivers could secure bank loans if their obligations were guaranteed by an outside party. Federal Farmers Home Administration or state Housing Finance Agency (HFA) insurance for receiver's certificates can accomplish this result. Yet, these agencies, confronted with a closer scrutiny of their commitment activities by underwriters, may be reluctant to extend their guarantee to receiver's notes. Foundation support, therefore, should be considered. For instance, the Union-Miles Development Corporation, as a receiver in Cleveland, secured

a \$20,000 funding guarantee from the Local Initiatives Support Corporation (LISC) of New York. The LISC and other foundations financing receivership must be considered when organizing this mechanism.

Linking receivership to other strategies for dealing with problem properties is important as well. The relationship of receivership to both code enforcement and property tax foreclosure is significant. It also may be possible to link receivership with community development objectives. Numerous municipalities have attempted to encourage low-income cooperatives, community group building management, and the like. These efforts often have fallen below expectations. Receivership may help local residents and organizations develop skills that are essential for successful co-oping and management.

### 3. Multigroup Participation

Significantly, many groups should be allowed to participate in the receivership process. City agencies, tenants, "affected residents," and not-for-profit groups all have much to contribute. They should be allowed to initiate and effectuate the receivership process.

## V. CONCLUSION

Receivership is an important mechanism for dealing with problem buildings. Jurisdictions interested in its use should adopt appropriate enabling legislation. They must construct an effective mechanism for receivership administration, paying particular attention to targeting, linkage, and multigroup participation. This Article has attempted to assist the statutory and administrative formulation of the receivership mechanism.

## APPENDIX

## Housing Receivership: National Statutory Framework—Detailed Analysis

<u>Statutory Provisions</u>	Jurisdiction—Connecticut Sections 47a-56 to 47a-56j
<u>Statute Citation</u>	Connecticut General Statutes. Sections 47a-56 to 47a-56j (1983).
<u>Triggering-Applicable Circumstances</u>	Nuisance (in tenement and lodging house) that constitutes a serious fire hazard or is a serious threat to life, health, or safety.
<u>Triggering-Who Initiates Proceeding</u>	Public authority appointed by legislative body.
<u>Receivership Agent</u>	Court “appoints receiver” (not specified).
<u>Type of Proceeding</u>	Judicial proceedings in superior court.
<u>Receivership Process</u>	The authority applies to the court of common pleas for a show-cause order as to why receiver should not be appointed to rectify hazardous conditions. A show-cause order is returnable in not less than five days except in instances when hazardous conditions pose an “imminent danger to building’s occupants or the occupants of adjoining properties.” The receivership application contains: a) Proof of notification; b) a statement of hazardous condition; and c) a brief description of planned repair or rehabilitation. The property owners or interested parties are given opportunity to correct the hazard. If remediation is not completed, a public receiver is appointed. Determination of a show-cause order has “precedence over every other business of the civil division of the court of common pleas.”
<u>Notification Requirements</u>	The statute provides for personal service on interested parties—owners, mortgagees of

record, and lienors. If the interested parties cannot, with "due diligence," be personally served, in rem notification is permitted in the form of: a) Posting a copy of the show-cause order in a "conspicuous place" on the property where the nuisance exists; b) sending a registered letter to the interested parties of record at their last known posted address; and c) newspaper publication. In instances of hazardous conditions posing "imminent danger," attempts at personal notification are not required and instead, notice via posting and mailing suffices.

#### Receivership Duties and Powers

The receiver, "with all reasonable speed," removes the "hazardous condition" and during the term of receivership, "repairs and maintains the property in a safe and healthful condition." The receiver has the power to let contracts and incur expenses. The receiver pays building property taxes, and maintenance and management expenses. Public bidding is not required for work costing less than five hundred dollars or in instances of hazardous conditions posing an "imminent hazard." The receiver must post bond and carry liability insurance.

#### Receivership Financing

The receiver collects accrued and accruing rents to finance repairs. If this income proves insufficient, "the municipality advances any required sums and thereupon shall have a lien against the property having priority with respect to all existing mortgages or liens."

A Tenant's House Operating Fund also is authorized to help finance the receiver's expenses. This fund consists of locally appropriated monies and State advances in aid. The municipality retains a lien for funds advanced. If the operating fund proves insufficient, the receiver's expenses

“may be met from the proceeds of municipal bond sale.”

Receivership  
Compensation

The receiver receives a reasonable fee determined by the court. The receiver also pays building property taxes, maintenance and management expenses.

Receivership Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Connecticut Sections 47a-56 to 47a-61
<u>Statute Citation</u>	Connecticut General Statutes. Sections 47a-56 to 47a-61 (1983).
<u>Triggering-Applicable Circumstances</u>	Tenement or lodging home with one or more of the following conditions: Housing code violations, lack of heat, running water, electricity, lighting, adequate sewage disposal facilities, other conditions dangerous to life, health, or safety and infestation of rodents, vermin, or other pests.
<u>Triggering-Who Initiates Proceeding</u>	A majority of tenants that claim the existence of hazardous conditions under oath.
<u>Receivership Agent</u>	Court appointed receiver.
<u>Type of Proceeding</u>	Judicial proceeding in superior court.
<u>Receivership Process</u>	The tenants bring the action. The court refers the complaint to a referee. The referee submits findings or recommendations to the court. Interested parties (the owner, mortgagees, or lienors of record) may: a) Contest the presence of hazardous conditions, or b) claim the tenants caused the hazardous conditions. If the court rejects these two defenses, the court appoints a receiver.
<u>Notification Requirements</u>	Tenants "shall cause a notice of the pendency of such action be filed in the local land records."
<u>Receivership Duties and Powers</u>	The receiver collects rents and applies rents to removing hazardous conditions.
<u>Receivership Financing</u>	Not specified.

Receivership  
Compensation

Not specified.

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Delaware Sections 5901-5907
<u>Statute Citation</u>	Delaware Code Annotated. Title 25, Sections 5901-5907 (1974).
<u>Triggering-Applicable Circumstances</u>	Rental buildings with lack of heat, running water, light, electricity, inadequate sewage disposal facilities, or other conditions “imminently dangerous to the life, health, or safety of the tenant.”
<u>Triggering-Who Initiates Proceeding</u>	A tenant or group of tenants in hazardous building.
<u>Receivership Agent</u>	State Division of Consumer Affairs or its successor agency.
<u>Type of Proceeding</u>	Judicial proceeding.
<u>Receivership Process</u>	The tenants bring an action against “defendants.” Defendants may include all interested parties duly disclosed or whose interest is a matter of public record or are capable of being affected by this proceeding. Defendants can contest action by claiming: a) The conditions in the petition filed by the tenants do not exist; b) willful or grossly negligent acts of one or more petitioning tenants caused the conditions; or c) the defendants would have corrected the conditions were it not for the refusal of the petitioning tenant to allow reasonable access. After a trial, the court enters judgment. The owner or other interested parties may apply to the court for the court to permit them to remove or remedy specified conditions; and, on proof of such intent, the court grants a stay of judgment. If such corrective action has not proceeded with due diligence and hazardous conditions exist five days after notification, then the court appoints a receiver. The receiver has fifteen days to make an independent finding

as to whether he or she should collect rents and make repairs.

Notification  
Requirements

Only in the form of the receiver's findings filed with the county recorder of deed and in the filing of the receiver's repair liens. Other advance notification of receivership is not specified.

Receivership  
Duties and Powers

The receiver has "all the powers and duties accorded a receiver foreclosing a mortgage on real property" and all other powers and duties deemed necessary by the court. These powers and duties include, but are not necessarily limited to: a) Collecting and using all rents and profits of the property; b) correcting the hazardous condition evoking the receivership; c) complying with all applicable state or local building and construction codes; d) paying all expenses reasonably necessary for proper building operation and management—for example, insurance, mortgage payments, taxes, assessments, and receiver's fees; e) compensating the tenants for "whatever deprivation of their rental agreement rights resulted from conditions evoking receivership;" and f) paying the costs of the receivership proceeding.

Receivership  
Financing

A lien for the amount of repairs is placed on the receivership property. The lien is recorded with the county recorder of deeds, and notice of this action then is given to all lien-holders of record. The lien is released when the receiver's repairs are paid for from the rents and profits of the receivership property.

Receivership  
Compensation

Fees are allowed for the services of the receiver and any agent he or she should have.

Receivership  
Discharge

The receiver may be discharged when: a) Hazardous conditions evoking the receivership are remedied; b) the receiver-

ship property complies with all codes; c) the receiver's expenses have been reimbursed; and d) any surplus monies are returned to the property owner.

If clauses a) and b) above are satisfied, interested parties—the owner, mortgagee, and other lienors—can discharge the receiver by paying outstanding receivership expenses that have not been reimbursed from the property's rents and profits.

If the court determines that future profits of the property will not cover the costs of satisfying clauses a) and b) above, the court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement and ordering the vacation of the building within a specified time. The court does not permit repairs that cannot be paid out of the future profits of the property.

<u>Statutory Provisions</u>	Jurisdiction—Illinois Sections 11-31-1 & 2
<u>Statute Citation</u>	Illinois Annotated Statutes Chapter 24. Sections 11-31-1 & 2 (Smith-Hurd Supp. 1983).
<u>Triggering-Applicable Circumstances</u>	Action is taken for three building categories: a) Upon investigation, a municipality finds that a building is dangerous and unsafe, or uncompleted and abandoned; b) the building or structure is located within an area affected by a conservation plan and fails to conform to the standards or provisions of such a plan; or c) the building fails to conform to minimum standards of health and safety as established by municipal ordinance.
<u>Triggering-Who Initiates Proceeding</u>	Municipal corporate authorities.
<u>Receivership Agent</u>	Municipality or person performing the service by authority of the municipality.
<u>Type of Proceeding</u>	Judicial proceeding.
<u>Receivership Process</u>	If the property's owner, at least fifteen days after written notice, fails to make repairs or demolish the unsafe structure, the corporate authority may apply to the county circuit court for an order authorizing the corporate authority to take action with respect to the hazardous building. The hearing for such application must be expedited by the court and given precedence over all other suits.
<u>Notification Requirements</u>	Written notice is served to owner and lien holders of record. If, after a diligent search, the identity or whereabouts of the owner has not been found, notice is mailed to the last known person whose name appears on last real estate assessment.

Receivership  
Duties and Powers

“Demolition, repair, or enclosure” as required.

Receivership  
Financing

Costs are recoverable from the property owner and constitute a lien on the building that is superior to all liens, except taxes. To impose such a lien, notice is filed in the office of the County Recorder of Deeds. Notice consists of: a) Identifying the property; b) indicating repair costs; and c) indicating the date when cost was incurred. The repair lien may be enforced by proceeding to foreclose as in the case of mortgages and mechanics’ liens. The foreclosure action must commence within three years after lien is filed. The court may authorize the receiver to recover the cost of repair or rehabilitation by the issuance and sale of notes or receiver’s certificates bearing interest as the court may determine. These certificates constitute a first lien upon the real property and are superior to all prior assignments, except taxes.

Receivership  
Compensation

Not specified.

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Illinois Section 11-13-15
<u>Statute Citation</u>	Illinois Annotated Statutes Chapter 24. Section 11-13-15 (Smith-Hurd Supp. 1983).
<u>Triggering-Applicable Circumstances</u>	Building constructed, reconstructed, altered, repaired, converted, or maintained in violation of local codes.
<u>Triggering-Who Initiates Proceeding</u>	Local municipal authorities, owners, or tenants of real property within one thousand two hundred feet of the hazardous building “who show that their property [or] person will be substantially affected by the alleged violations.”
<u>Receivership Agent</u>	Not specified.
<u>Type of Proceeding</u>	Judicial process.
<u>Receivership Process</u>	On complaint from the parties specified above, the court may issue appropriate action: a) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use of the premises; b) to prevent occupancy of the building, structure, or land; c) to prevent any illegal act, conduct, business, or use in or about the premises; and d) to restrain, correct, or abate the violation. Remedial action may include receivership or the issuance of a restraining order, or preliminary or permanent injunction. If the court decrees a permanent injunction, the court may allow the plaintiff a reasonable sum of money for the services of the plaintiff’s attorney. This allowance is part of the costs of litigation and is recovered as such.
<u>Notification Requirements</u>	When action is initiated by private parties, written notice of the complaint is served upon municipality by serving its chief executive officer.

Receivership  
Duties and Powers

See Receivership Process.

Receivership  
Financing

See Receivership Process.

Receivership  
Compensation

Not specified. Plaintiff's legal fees are recoverable from the defendant.

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Indiana Sections 36-7-9-1 to 36-7-9-28
<u>Statute Citation</u>	Indiana Statutes Annotated Chapter 9. Sections 36-7-9-1 to 36-7-9-28 (Burns 1981).
<u>Triggering-Applicable Circumstances</u>	Building or structure with: a) Impaired conditions that renders it unsafe; b) a fire hazard; c) a health hazard; d) a public nuisance; and e) dangerous conditions in violation of a statute or ordinance concerning building condition or maintenance.
<u>Triggering-Who Initiates Proceeding</u>	The “enforcement authority” is the chief administrative officer of the Department of Metropolitan Development.
<u>Receivership Agent</u>	The receiver may be “a not-for-profit corporation the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county.”
<u>Type of Proceeding</u>	Judicial.
<u>Receivership Process</u>	The “enforcement authority” brings a civil action after an investigation reveals violations. In place of issuing an injunction or other remedies, the court may appoint a receiver.
<u>Notification Requirements</u>	Notice is served to owners or others with a “substantial property interest” defined as “any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate, a future interest, a present possessory interest, or an equitable interest of a contract purchaser. In a consolidated city, this interest is reflected by a deed, lease, license, mortgage, land sale contract, or lien.” Notice to the property owner or other interested parties is given either by personal delivery or registered mail. If, after a “rea-

Receivership  
Duties and Powers

sonable effort," service by these two means cannot be obtained, service by publication in the local newspaper suffices.

The receiver collects rents, and removes the hazardous conditions and code violations. The receiver can let contracts and sell receivership certificates.

Receivership  
Financing

The receiver must draw first from the property's rent profits. After a hearing, the court may authorize the receiver to obtain the money needed by the issuance and sale of notes or receiver's certificates bearing interest fixed by the court. These documents constitute a first lien on the hazardous property and its income. This lien is superior to all other assignments of rents, liens, mortgages, and other encumbrances on the property, except taxes. A note must be filed with the County Recorder's Office within sixty days. The lien is released on payment of the note by collecting rents or by owner settlement. The lien must be acted upon within two years.

Receivership  
Compensation

The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Maryland Sections 8-211 and 8-211.1
<u>Statute Citation</u>	Maryland Real Property Code. Sections 8-211 and 8-211.1 (1981).
<u>Triggering-Applicable Circumstances</u>	<p>Any leased dwelling unit—either publicly or privately owned, whether single or multiple units—when conditions or defects that constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health, or safety of its occupants, including: a) A lack of heat, light, electricity, or hot or cold running water; b) a lack of adequate sewage disposal facilities; c) an infestation of rodents in two or more dwelling units; d) the existence of paint containing lead pigment on surfaces within the dwelling unit; e) the existence of any structural defect that presents a serious and substantial threat to the physical safety of the occupants; or f) any condition that presents a health or fire hazard.</p> <p>Not included are those conditions that merely impair the aesthetic value of the premises, or which constitute housing code violations of a nondangerous nature. Section 8-211.1 specifically requires the removal of lead-based paint from any interior, exterior, or other surface of residential premises that are easily accessible to a child.</p>
<u>Triggering-Who Initiates Proceeding</u>	Tenants of dwelling unit where conditions exist.
<u>Receivership Agent</u>	Administrator appointed by court, and can be an owner, agent, tenant, or other party.
<u>Type of Proceeding</u>	Judicial.
<u>Receivership Process</u>	The tenant notifies the landlord of the existence of the defects or conditions. The land-

lord then has a reasonable time—thirty days or less—in which to make the repairs or correct the conditions. If the landlord fails to make repairs, the tenant may bring an action of rent escrow to pay full or partial rent, depending on property's condition, into the escrow fund. After the court establishes the rent escrow fund, the court may: a) Allow the property owner or agent to make repairs; b) appoint an administrator to collect rents and make repairs; c) return rental payments to the tenant if the repairs are not made; or d) take other action.

Notification  
Requirements

Notice is given by: a) a written communication sent by certified mail listing the asserted conditions or defects; or b) a written violation, condemnation or other notice from an appropriate state, county, municipal, or local government agency, stating the asserted conditions or defects.

Receivership  
Duties and Powers

The receiver collects rents and makes repairs.

Receivership  
Financing

Other than the use of collected rent, none is specified.

Receivership  
Compensation

Not specified.

Receivership  
Discharge

Not specified, except for when conditions involve lead-based paint. When lead-based paint is the problem, the appropriate local health authority must present a certification to the court that the premises have been inspected and that all lead-based paint violations have been corrected.

<u>Statutory Provisions</u>	Jurisdiction—Massachusetts Sections 111-127A to 111-127K
<u>Statute Citation</u>	Massachusetts Annotated Laws Chapter 111. Sections 127A to 127K (Michie/Law Co-op. Supp. 1983).
<u>Triggering-Applicable Circumstances</u>	A residential building that is: a) Unfit for human habitation; b) in violation of any Board of Health standard; c) may become a nuisance; or d) may be a cause of sickness or accident to the occupant or to the public.
<u>Triggering-Who Initiates Proceeding</u>	The Board of Health initiates a receivership action. In Boston and Worcester, the Commissioner of Housing Inspection and affected tenants initiate the proceeding.
<u>Receivership Agent</u>	Court appointed receiver that may be a person, partnership, or corporation.
<u>Type of Proceeding</u>	If the owner fails or refuses to obey the order of Board of Health, the Board applies to the superior court for an injunction to enforce the order. A tenant may bring a petition in a district court or a superior court.
<u>Receivership Process</u>	The Board of Health examines the structure and then issues a written order to the owner to: a) Vacate the premises; b) put the premises in clean condition; or c) comply with applicable codes. If the owner fails to comply, the Board of Health may: a) Have the premises cleaned; b) remedy the specified conditions; c) have the property vacated and sealed; or d) issue a written order to the property owner of record setting forth the particulars of unfitness and requiring that the conditions be remedied. If the latter order is not acted upon, the superior court has jurisdiction, by injunction or otherwise, to enforce the requirements. If action is initiated by the tenant, inspection by authorities must show that:

a) Violations of the State sanitary code exist and may endanger or materially impair the health and well being of any tenant; and b) the violations were not substantially caused by the tenant or anyone acting under his control.

The district court reviews a tenant's petition and, if approved, authorizes rental payments to the court clerk. The court clerk may use these proceeds "for the purpose of effectuating the removal of the violation."

### Notification Requirements

If the Board of Health examines the property and demands corrective action, notice is served via registered mail to the property owner and any mortgagee of record. Similar notice is given if any remedial action then is taken. If a tenant initiates the action, notice is given to the owner of record, mortgagees, and lienors via personal service or mailing to their last known address.

### Receivership Duties and Powers

A receiver collects rents, profits, and funds to improve property for it to meet the standards of "fitness for habitation."

### Receivership Financing

The receiver's financing comes from building's rents and profits. Expenses plus interest constitute a debt and lien on the receivership property. The lien takes effect when filed and continues for two years. The lien is released when the tax "collector" issues a certificate that the owner has repaid debt for which the lien was attached. The "collector" has the same power of duties with respect to the receivership lien as "in the case of the annual taxes upon real estate"—for example, foreclosure. If this source proves insufficient, the receiver may petition the court to apply for financial assistance from the State. The State will advance this financing if it is: a) Necessary; b) reasonable; and c) "not so excessive as to constitute an imprudent and unreasonable

expenditure to accomplish this purpose.” Any amount, plus interest, that the State advances constitutes a debt owed to the State by the owner. That amount is recoverable in a contract action and constitutes a lien on the receivership property.

Receivership  
Compensation

Not specified.

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—Minnesota Sections 566.18 to 566.33
<u>Statute Citation</u>	Minnesota Statutes Annotated. Sections 566.18 to 566.33 (West Supp. 1984).
<u>Triggering-Applicable Circumstances</u>	Any building used in whole or in part as a dwelling—for example, a single family or multiple family dwelling—that violates: a) Health, safety, fire, or other codes; or b) violates an oral or written agreement, lease or contract for the rental of a dwelling.
<u>Triggering-Who Initiates Proceeding</u>	Tenant.
<u>Receivership Agent</u>	The administrator may be any person other than an owner of the building, the inspector, the complaining tenant, or any person living in the complaining tenant's dwelling unit. If a State agency, court, or local agency is authorized by statute, ordinance, or regulation to provide persons to act as administrators under this section, then the court may appoint such persons as administrators to the extent they are available.
<u>Type of Proceeding</u>	Judicial action in county court. Municipal court in the counties of Hennepin, Ramsey, and St. Louis.
<u>Receivership Process</u>	Upon tenant demand, the local enforcement agency conducts an inspection. The agency then notifies the property owner of any violation and gives a reasonable period to make repairs. A hearing is held in which the owner and other interested parties may: a) Contest the existence of violations; b) claim the tenants caused the violations; and c) claim that the tenants refused entry. If the court rejects these defenses, the court may: a) Order the owner to remedy the violation; b) order the tenant to remedy the

violation and deduct the cost from the rent; or c) appoint an administrator and direct that the owner pay rents due to the administrator and direct the administrator to remedy violations and operate the building.

### Notification Requirements

The tenant complaint includes: a) Material facts showing that a code violation or violations exist in the building; b) the relief sought; c) the rents due each month from each dwelling unit within the building, if known; and d) a copy of the official inspection report. The tenant complaint is given to judge or court clerk. Upon receipt of the complaint, the clerk of the court prepares a summons that: a) Specifies time and place of the hearing to be held on the complaint; b) states that, if at that time the defendant does not assert and establish a defense, the court may enter judgment for the relief requested.

The summons and complaint are served upon the owner or his agent "at least five and not more than ten days" before the time at which the court is to hear the complaint. Personal service is required by the rules of civil procedure, except that, if service cannot be made with due diligence, service may be made by affixing a copy of the summons and complaint prominently to the building involved, and at the same time mailing a copy by certified mail to the last known address of the defendant.

A copy of the judgment is served personally on every tenant of the building whose obligations will be affected by the judgment. If personal service cannot be had with due diligence, service may be made by posting a notice of the judgment on the entrance door of the tenant's dwelling unit and by mailing a copy of the judgment by certified mail.

### Receivership Duties and Powers

The receiver may: a) Collect rents; b) enter into contracts for materials, labor, and serv-

ices; c) provide all services as set forth in the tenant's lease; and d) petition the city for funds needed to make repairs.

Receivership  
Financing

The receiver's expenses are financed from property rents and loans from the city. The administrator may petition the court, after notice to the parties, for an order permitting that a lien be placed on the property for the monies expended and the loan secured.

Receivership  
Compensation

Not specified.

Receivership  
Discharge

The receiver must submit to the court an accounting of receipts and disbursements, and when appropriate, a certification, by an appropriate governmental agency, that the violations found by the court have been remedied; and comply with any other order the court shall make as a condition of discharge.

<u>Statutory Provisions</u>	Jurisdiction—Missouri Sections 441.500 to 441.610
<u>Statute Citation</u>	Missouri Annotated Statutes. Sections 441.500 to 441.610 (Vernon Supp. 1984).
<u>Triggering-Applicable Circumstances</u>	A violation of provisions of the housing code applying to the maintenance of the building or dwelling unit which, if not promptly corrected, will constitute a fire hazard or a serious threat to the life, health, or safety of occupants.
<u>Triggering-Who Initiates Proceeding</u>	The municipality acting through the code enforcement agency, or occupants of one-third, or more, of the dwelling units within a building.
<u>Receivership Agent</u>	The code enforcement agency, the owner, the mortgagee, or other lienor of record, a licensed attorney or real estate broker, or any other qualified person may act as a receiver.
<u>Type of Proceeding</u>	Judicial proceeding—trial by the court without a jury.
<u>Receivership Process</u>	An action begins with a filing of a written complaint. The petition states: a) The conditions constituting a nuisance; b) that code violations exist; c) that the property owners failed, within a reasonable time, to undertake to remove the nuisance; d) if the action is brought by occupants, the number of dwelling units they occupy and the total number of dwelling units in the building; and e) the relief sought. This petition is filed for record, with the County Recorder of Deeds. From the time of filing such notice, the pendency of suit constitutes constructive notice to persons thereafter acquiring an interest in the building. Charges are dropped upon proof that the property owner or the defendant

has been unable to obtain entry for the purpose of correcting the nuisance.

Upon judgment, the court may: a) Direct that the owner deposit present and future rents due with the clerk of the court; or b) allow the owner a reasonable time to correct the deficiencies. The court may then authorize the owner to draw upon the rents deposited in court to pay for necessary repairs or appoint a receiver to draw upon rent monies. The court must expedite this process and may give this suit precedence over other suits. All lien holders of record are given the right of first refusal to serve as receiver in the order in which their lien appears of record.

#### Notification Requirements

Personal service must be given in accordance with the rules of civil procedure. If, despite reasonable efforts, personal service cannot be made, service by other means is acceptable.

#### Receivership Duties and Powers

The receiver may, on order of the court, take possession of the property, collect all rents and profits, and pay all costs of management, including all insurance premiums, and all general and special real estate taxes or assessments.

The receiver, with all reasonable speed, removes all of the housing code violations that constitute a nuisance as found by the court. The receiver has the power to let contracts, in accordance with the provisions of local laws, ordinances, rules, and regulations applicable to contracts. The receiver must post bond.

#### Receivership Financing

The receiver may, with the approval of the circuit court, borrow money against and encumber the property as security in such amounts as may be necessary to carry out his or her responsibilities. The circuit court may authorize the receiver to issue receiver's certificates as security against these borrowings. These certificates shall

be authorized investments for banks and savings and loan associations. In addition to issuing receiver certificates, the receiver may pledge the rentals from the property and borrow or encumber the property on the strength of the rental income.

Any receiver appointed shall have a lien upon rents for all necessary expenses. This lien has priority over all other liens and encumbrances of record upon the rents receivable, except taxes, assessments, and mortgages recorded prior to October 13, 1969.

Receivership  
Compensation

Reasonable and necessary expenses.

Receivership  
Discharge

The receiver is discharged upon rendering a full and complete accounting to the court when the receiver has removed the conditions prompting the receivership and the cost has been paid or reimbursed from the property's rents and income. Any surplus money is paid to the owner, or the mortgagee, or a lienor as the court directs. At any time, the receiver may be discharged upon filing his account without affecting the right of the code enforcement agency to its lien. Upon the removal of the condition prompting the receivership, the owner, the mortgagee, or lienor may apply for the discharge of the receiver upon payment to the receiver of all expenses incurred.

<u>Statutory Provisions</u>	Jurisdiction—New Jersey Sections 2A:42-85 to 2A:42-97
<u>Statute Citation</u>	New Jersey Statutes Annotated. Sections 2A:42-85 to 2A:42-97 (West Supp. 1984).
<u>Triggering-Applicable Circumstances</u>	A multiple dwelling with a lack of heat, running water, electricity, adequate sewage disposal facilities, or any other violation of the standards of fitness for human habitation.
<u>Triggering-Who Initiates Proceeding</u>	Public officer appointed by the municipality or any tenant occupying a dwelling.
<u>Receivership Agent</u>	The court appoints an administrator who may be: a) A municipal public officer; b) an incorporated or unincorporated association; or c) any "other responsible person" or persons.
<u>Type of Proceeding</u>	Judicial proceeding in a court of competent jurisdiction.
<u>Receivership Process</u>	Public officers and tenants may initiate the proceeding. A judge or court clerk issues a petition that sets forth: a) The material facts showing the violations exist; b) that the owner or manager has been notified of the conditions and has failed to take any action within a reasonable time period to make repairs; c) a brief description of the work required; and d) the amount of monthly rent due from each tenant. A hearing is held and the court may dismiss the petition upon: a) Failure to prove that violations exist; or b) proof that conditions have been removed or remedied; or c) proof that hazardous conditions have been caused maliciously by a petitioning tenant or tenants, or their families; or d) proof that any tenant or resident refused entry to the owner or agent for the purpose of correcting hazardous conditions. After hear-

ing, the court in a summary manner may direct that the owner pay rents to an "administrator" who then will make necessary repairs.

### Notification Requirements

Although the exact form of notice to a landlord is not specified by the statute, *Berzito v. Gambino*, 63 N.J. 460, 469, 308 A.2d 17, 22 (1973), indicated that the landlord must be given "positive and seasonable" notice of violations and requested corrective action.

The statute requires specific notice to tenants. Notice of a court proceeding is given to non-petitioning tenants and occupants by posting a copy of the petition on a conspicuous part of the building. After the court conducts a hearing, a certified copy of the judgment is served personally upon each non-petitioning tenant. If, with due diligence, personal service cannot be made, service on these tenants is made by affixing a certified copy of the judgment on the entrance door of the tenant's apartment and, in addition, within one day after affixing the copy to the door, by sending a certified copy thereof to such tenant by registered mail.

### Receivership Duties and Powers

Under direction of the court, the administrator uses deposited rents to remedy conditions. The administrator also is required to keep written accounts, itemizing the receipts and expenditures that shall be open to inspection by the owners, and any mortgagee, lienor, or parties of interest in such receipts or expenditures. The administrator must furnish a bond.

### Receivership Financing

The administrator is limited to the use of rents collected from tenants occupying the building. The administrator also may draw from a performance bond posted by the property owner, and defaulted upon when the owner did not make repairs.

### Receivership

The court may allow a reasonable amount

Compensation

for the services of the administrator.

Receivership

Not specified.

Discharge

<u>Statutory Provisions</u>	Jurisdiction—New Jersey Sections 2A:42-75 to 2A:42-84
<u>Statute Citation</u>	New Jersey Statutes Annotated. Sections 2A:42-75 to 2A:42-84 (West Supp. 1984).
<u>Triggering-Applicable Circumstances</u>	A multiple dwelling with conditions harmful to the health and safety of occupants.
<u>Triggering-Who Initiates Proceeding</u>	Public officer appointed by the municipality.
<u>Receivership Agent</u>	The public official that initiates the proceeding seeks his own appointment as receiver. The receiver may appoint the first mortgagee as agent to manage the property. If the first mortgagee is unwilling, the receiver may appoint some other competent person with approval of the governing body.
<u>Type of Proceeding</u>	Action in superior court for appointment of a receiver. The person aggrieved may bring an action for injunctive relief.
<u>Receivership Process</u>	If preliminary investigation indicates that a multiple dwelling is in substandard condition, a hearing is held, and if conditions warrant, a complaint is served to the property owner and other interested parties. If these individuals fail to make repairs, the superior court imposes controls on rent and appoints a receiver to collect rent and income, and make repairs to remove the hazardous conditions.
<u>Notification Requirements</u>	Notification of the hearing is made to the property owner and “parties in interest”—individuals that have interests of record in a multiple dwelling and that are in actual possession, and any person authorized to receive rents. Within sixty days after

receiver appointment, the person aggrieved by this order may bring an action for injunctive relief.

Receivership  
Duties and Powers

The receiver collects property rents and income, makes repairs to remove hazardous conditions, and secures the payment of delinquent taxes, penalties, interest costs, and expenses. Receivership to repair property is similar to receivership to collect delinquent taxes. The court retains jurisdiction "to make such orders and directions to the receiver as may be necessary to effectuate the purposes of this act and to conserve the real property during the pendency of the receivership."

Receivership  
Financing

None other than use of rents.

Receivership  
Compensation

"No fees shall be allowed the receiver or his counsel."

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—New Jersey Section 40:48-2.12 a-k
<u>Statute Citation</u>	New Jersey Statutes Annotated. Section 40:48-2.12 a-k (West 1967).
<u>Triggering-Applicable Circumstances</u>	An owner of a building containing twenty or more housing units is notified of conditions that are harmful to the occupant's health and safety, and to the general public, and no action is taken to remedy the hazard.
<u>Triggering-Who Initiates Proceeding</u>	Municipal officer, with approval of the governing body of the municipality.
<u>Receivership Agent</u>	A municipal officer petitions the court to appoint him as receiver. The receiver may appoint the first mortgagee as his agent. If the first mortgagee is unwilling, receiver may appoint any competent person.
<u>Type of Proceeding</u>	Action in superior court.
<u>Receivership Process</u>	If conditions are not corrected after the property owner has been notified and given reasonable time to remedy the conditions, the municipal officer brings an action in the superior court to be appointed receiver "ex officio" of the property's rent and income. The court may proceed in this action in a "summary manner." The appointed receiver enters into and takes charge of the premises, supervises abatement of the nuisance, the correction of the defective condition, and the maintenance of the premises in a proper condition in order to conform to the requirements of municipal ordinances and State laws. The court retains jurisdiction to "make such orders and directions to the receiver as may be necessary to conserve the real property during the pendency of the receivership."

Notification  
Requirements

Personal notice is served upon the owner, lessor, and agent. When the owner or lessor has failed to register the premises with the municipal clerk as required by an ordinance, and has not designated an agent in respect to the premises, or when such an agent has been designated but cannot be found at the address given in the registration, then notice may be posted on the premises in a conspicuous place.

Receivership  
Duties and Powers

The receiver enters and takes charge of the premises, supervises abatement of the nuisance and the correction of defective conditions, and maintains the premises in proper condition. The receiver also collects the rental and other income of the property. The receiver is not required to post bond. The receivership to repair property is deemed similar to receivership to collect delinquent taxes, interest, et cetera.

Receivership  
Financing

The rents and income collected by the receiver are available for expenses, as well as for fines or penalties imposed for code violations. If the building's rent and income are insufficient to cover the receivership expenses, the receiver may expend municipal funds "made available for this purpose" with this amount then constituting a lien on the premises.

Receivership  
Compensation

In any receivership, "no fees shall be allowed the receiver or his counsel."

Receivership  
Discharge

Not specified.

<u>Statutory Provisions</u>	Jurisdiction—New Jersey Sections 54-4:123 to 54-4:132
<u>Statute Citation</u>	New Jersey Statutes Annotated. Sections 54-4-123 to 54-4-132 (West 1960).
<u>Triggering-Applicable Circumstances</u>	Taxes or any installment levied against real property that has been delinquent for more than six months. This statute does not apply to owner-occupied property.
<u>Triggering-Who Initiates Proceeding</u>	Municipal tax collector or other officer charged with the collection of taxes in the municipality.
<u>Receivership Agent</u>	Municipal tax collector or other public officer. The first mortgagee or other “competent person” also may be appointed.
<u>Receivership Process</u>	A tax collector brings an action in the superior court to be appointed receiver ex officio of the rents and income for the purpose of collecting and satisfying the delinquent taxes together with penalties, interest, costs, and expenses of the receivership as may be adjudged by the court. In all instances when the real property in question is encumbered by a first mortgage, and if such mortgagee is a proper person and is willing to accept such appointment, he may act as the receiver’s agent. The income collected from the property may be used to cover the expenses incurred by the receiver. If uncontested, real property may be sold for the nonpayment of delinquent taxes.
<u>Notification Requirements</u>	Not specified.
<u>Receivership Duties and Powers</u>	Collects rents, satisfies delinquent taxes out of rents and pays operating expenses of maintaining property in condition necessary to secure greatest amount of income.
<u>Receivership Financing</u>	Limited to the revenue collected as rental and other income from the property.

Receivership  
Compensation

“No fees shall be allowed the receiver or his counsel.”

Receivership  
Discharge

When tax delinquent property has been sold for back taxes.

<u>Statutory Provisions</u>	Jurisdiction—New York Section 309(5) a-g
<u>Statute Citation</u>	New York Multiple Dwelling Law. Section 309(5) a-g (McKinney 1974).
<u>Triggering-Applicable Circumstances</u>	A multiple dwelling with a “nuisance,” in the form of a serious fire hazard or a serious threat to life, health, or safety, and the Department of Real Estate desires that a receiver be appointed to remove the nuisance.
<u>Triggering-Who Initiates Proceeding</u>	Municipal Department of Real Estate.
<u>Receivership Agent</u>	Commissioner or chief executive of the bureau or the Municipal Department of Real Estate.
<u>Type of Proceeding</u>	Judicial proceeding in the supreme court, or in the Housing Division of New York City Civil Court.
<u>Receivership Process</u>	<p>The Department issues a written order to the property owner directing the removal of the nuisance. Within twenty-one days, a hearing is held at which time the Department requests the court to appoint a receiver. The Department then applies to the supreme court in the county where the property is situated, or to the Housing Division of the Civil Court of New York City by verified petition, for an order directing the owner and any mortgagees or lienors of record to show cause why the court should not appoint a receiver.</p> <p>The application must contain: a) Proof that an order has been issued and served on the owner, mortgagees, and lienors; b) a statement that a “nuisance” exists in the property after the time fixed for its removal; and c) a brief description of the nature of the work and the attendant cost required to</p>

remove the nuisance. A decision on this order has precedence over other court business. The court then either may appoint an outside receiver or allow the property owner or other interested parties to remove the nuisance, provided that they: a) Demonstrate the ability promptly to undertake the work required; and b) post security for the performance within the time, and in the amount and manner, deemed necessary by the court. If work is not completed by the owner or interested parties, the court then appoints and authorizes a receiver to use the defaulted security bond.

#### Notification Requirements

First notice of existing violations and required repairs is served upon the property owner. Within five days, the Department serves a copy of the order upon every mortgagee and lienor of record personally or by registered mail, at the address set forth in the recorded mortgage or lien. The Department then files a copy of the notice of service in the office of the county clerk where a party would file a mechanics' lien affecting the property.

Notice of application to the supreme court for the receiver's appointment requires the personal service of a copy of the order to the owners, mortgagees of record, and lienors. If these parties cannot be served personally with due diligence within the city where the property is located and within the time fixed in such order, then service is made by posting a copy in a conspicuous place on the premises and sending a copy by registered mail to the owner at the last address registered by him with the Department, or in the absence of such registration, to the address set forth in the last recorded deed with respect to said premises, or, in the case of a mortgagee or lienor, to the address set forth in the recorded mortgage or lien and by publica-

tion in a newspaper of general circulation. Service is deemed complete on filing proof of service in the office of the county clerk. In instances when a nuisance constitutes an immediate health or similar hazard to a building's occupants or occupants of an adjoining building, attempts at personal notice are not required and instead notice by posting and mailing suffices.

Receivership  
Duties and Powers

The appointed receiver is vested with all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property. He or she may remove the nuisance and, in addition to ordinary repairs, maintenance, and replacement, may make other improvements to effect a rehabilitation of the property to maintain safe and habitable conditions over the remaining useful life of the dwelling. The receiver has the power to let contracts or incur expenses in accordance with the provisions of local housing ordinances applicable to contracts for public works, except that advertisement is not required for each such contract and competitive bidding is not required for contracts under two thousand five hundred dollars.

The receiver is not required to file any bonds. The receiver collects profits and applies them to: a) The cost of removing the nuisance; b) the making of other improvements; c) the payment of expenses reasonably necessary to the proper operation and management of the property, including insurance and the fees of the managing agent; d) the necessary expenses of his or her office as receiver; and e) unpaid taxes, assessments, water rents, sewer rents, and penalties and interest thereon, and to sums due to mortgagees or lienors.

Receivership  
Financing

The receiver collects rents and profits, and uses these proceeds for repairs and mainte-

nance. If the income of the property is insufficient to cover the cost of remedying or removing the nuisance, making other improvements, and other necessary expenses of the receiver, the Department of Real Estate will advance to the receiver any sums required to cover such costs. The Department has a lien against the property in the amount of such advances. Any lien in favor of the Department of Real Estate, arising under this section, has priority over all other mortgages, liens, and encumbrances of record, except taxes and assessments levied pursuant to law.

Public monies advanced to the receiver come from a "Municipal Dwelling Section 309 Fund." This fund consists of such amounts as may be appropriated by the Board of Estimate or other analogous appropriating public body. This fund is maintained in a separate account by the Department of Real Estate and expenditures therefrom are made by the receiver to meet his or her costs, subject to audit. The receiver repays the amounts so expended to the section 309 fund from the property's proceeds. In the event that the amount in the fund is insufficient for these purposes and if no appropriation, or an insufficient appropriation is made, the receiver's expenses may be met from the proceeds of the sale of municipal bonds.

Receivership  
Compensation

The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. These fees and commissions are refunded to the section 309 fund.

Receivership  
Discharge

The receiver is discharged upon rendering a full and complete accounting to the court as to the removal of the nuisance, attendant costs, and reimbursements.

<u>Statutory Provisions</u>	Jurisdiction—New York City of New York and Counties of Nassau, Suffolk, Rockland, and Westchester Only Sections 769 to 782
<u>Statute Citation</u>	New York Real Property Actions and Proceedings. Sections 769 to 782 (McKinney Supp. 1983).
<u>Triggering-Applicable Circumstances</u>	A multiple dwelling located in New York City or Nassau, Suffolk, Rockland, or Westchester counties with conditions that are dangerous to life, health or safety—specifically including a lack of heat, running water, light, electricity, adequate sewage facilities, or safety from crime.
<u>Triggering-Who Initiates Proceeding</u>	One-third or more of the tenants occupying a multiple dwelling or the municipal commissioner charged with enforcement of the housing maintenance code.
<u>Receivership Agent</u>	Municipal housing code commissioner.
<u>Type of Proceeding</u>	Judicial proceeding.
<u>Receivership Process</u>	A petition is issued by the judge, or court clerk, and served upon the owner, mortgagee, and other interested parties. The petition includes: a) Material facts showing the existence of hazardous conditions—for example, a lack of heat, running water, electricity, and adequate sewage disposal facilities; b) the number of petitioners and a statement that they constitute one-third or more of the tenants; c) a brief description of the nature and cost of the repair work required; d) the amount of rent due from each such petitioner; and e) a statement of the relief sought.  The owner or interested parties may contest the petition by alleging: a) That the hazardous conditions do not exist; b) that the tenant petitioners caused the hazards; or

c) that the tenants refused entry to their apartments.

If the court rejects the above defenses, the court directs: a) The owner to deposit current and future rents due with the administrator appointed by the court; b) such rents be used, subject to the court's direction, to the extent necessary to remedy the hazardous conditions; and c) upon the completion of any work, any remaining surplus is returned to the owner.

The owner or other interested parties may apply to the court for the court to permit them to remove the hazardous conditions by demonstrating an ability to promptly undertake the work required and posting a security bond. If the work is not completed by the owner or interested parties, then the court appoints a receiver and authorizes him or her to use the defaulted security bond.

New York City  
Notification  
Requirements

The notice of petition is served personally upon the property owner last registered with the Department of Housing Preservation and Development. If service cannot be made with due diligence, service may be given by registered mail or by posting service on the receivership property.

Receivership  
Duties and Powers

The administrator collects rents, makes repairs, and keeps full accounting.

Receivership  
Financing

The receiver is limited to the funds collected from accruing rents. No separate fund is available.

Receivership  
Compensation

Outside of New York City, the court may allow a reasonable amount for services to be paid from the rent monies or security on deposit.

Receivership  
Discharge

Not specified.